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TAGORE LAW LECTURES, 1883.

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Tagore Law Lectures—1883.

OUTLINES OF AN

HISTORY

OF

THE HINDU LAW

OF

PARTITION, INHERITANCE, AND ADOPTION,

AS CONTAINED IN THE ORIGINAL SANSKRIT TREATISES.

BY

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Calcutta:
THACKER, SPINK AND CO.,
Publiſhers to the Calcutta Univerſity.
BOMBAY: THACKER & CO., LIMITED. MADRAS: HIGGINBOTHAM & CO.
LONDON: W. THACKER AND CO.

1885.

CALCUTTA:
PRINTED BY THACKER, SPINK AND CO.

10400

PREFACE.

In the Sanskrit Appendix (Appendix A), a number of misprints has been caused by the breaking of types in the printing. In the other Appendixes, and in the General Index and Table of Contents, unaccented letters have, in many cases, been printed for accented ones, owing to the scarcity of accented types in the Printing Office.

(designed as Buhler MS.) this volume. A complete enumeration of the MSS. of unpublished Sanskrit works consulted in the present work, showing the Collections from which they were taken, will be found in the first Index.

The reader is requested not to overlook the list of Errata, at the close of this volume. The printing of the book having extended over a space of more than twenty months,

PREFACE.

THIS volume of Lectures could never have been written but for the facilities offered to me for using the principal Collections of Sanskrit MSS. in England and India. It is in particular to Dr. R. Rost, Librarian of the India Office Library, London, and to K. M. Chatfield, Esq., Director of Public Instruction, Bombay, that my heartiest thanks are due for the readiness with which they have responded to my applications for the loan of Sanskrit MSS. under their care. Similar aid has been received from Professor Bühler and from the late lamented Dr. Burnell, both of whom have allowed me the use of their valuable collections of legal Sanskrit MSS. Professor Bühler has obliged me, moreover, by the loan of a MS. sketch of Lectures on Indian Family Law, delivered by himself in the University of Vienna. Occasional references to this MS. (designed as Bühler MS.) will be found in the Notes to this volume. A complete enumeration of the MSS. of unpublished Sanskrit works consulted in the present work, showing the Collections from which they were taken, will be found in the first Index.

The reader is requested not to overlook the list of Errata, at the close of this volume. The printing of the book having extended over a space of more than twenty months, it was impossible for me to stay in India till it was out, and it was equally impossible for me to revise those Proof-sheets more than once which had to be sent to me from India. Accented letters were not available in sufficient numbers at first, and had to be substituted subsequently for unaccented ones. Owing to these circumstances the number of misprints is, unfortunately, considerable. All the more important Errata have been put together at the end of this volume.

Of the various Appendixes, Appendix A contains a collection of Sanskrit texts quoted in this volume. The Note on Burmese Law contains a *resumé* of the important discoveries recently made in that field by the Judicial Commissioner of Burma and his learned assistants. The General Note on the Law of Adoption contains copious extracts from that valuable production of the founder of the Tagore Lectures, the Dattakaçiromaṇi, translated into English by myself. It had been my intention to add, in a further Appendix, a number of other extensive Sanskrit texts from unpublished works, together with an English translation, but the difficulties experienced in the printing of Appendix A led to the abandonment of this design, and to the reservation of the other Sanskrit texts for a separate publication.

J. JOLLY.

WÜRZBURG, (GERMANY.)

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LECTURE I.

NEW MATERIALS FOR A HISTORICAL STUDY OF HINDU LAW.

I. THE COMMENTARIES AND DIGESTS.

Importance of Indian Law — Advantages of the historical method — Comparative Jurisprudence — Recent progress in the study of Indian Law — The Commentaries — Asaháya — His lost Commentary on the Code of Manu — Medhátithi's Manubháshya — Restored by Madanapála — Medhátithi's Smṛitiviveka — His merit as a commentator — Other commentaries — Govindarája — Sarvajna Náráyaṇá — Kullúka — Rághavánanda — A Kashmirian Commentary — Nandanáchárya — Importance of these works — Mitákshará — Aparárka — Cúlapáṇi — Viçveçvara — Nandapaṇḍita — Bálambhaṭṭa — Commentaries on the Vishṇu, Paráçara, Ápastamba, Gautama Smṛitis — Importance of the Commentaries — Schools of law — Hemádri and Dalapati — Todaramalla — The five schools of law — Madras digests — Dáyabhága — Vivádárṇavabhanjana — Treatises on adoption — Two general questions—The Bengal school and the other schools — Rise of the Bengal school — Benares school — Question as to the practical character of the digests — Rank and position of their authors — They are scientific treatises.

Importance of Indian law.

INDIAN Law has been, and is being, studied by thousands in India, on account of its practical importance which cannot be rated too highly. But this time-honoured system of Law and Jurisprudence has another claim for consideration still, which rests on its intrinsic value and interest for every student of the history and literature of the East. It is a mere truism to say that nothing is better capable of illustrating the degree and kind of culture attained by a nation than its laws and usages. The Indian soil has not only been productive in deep thinkers, eminent founders of world-religions, and gifted poets, but it has brought forth a system of law which, after having spread over the whole vast Continent of India, has penetrated at an early period into Burma and Siam, and has become the foundation of written law in these two countries. In modern times, after the establishment of British rule in India, the hold of the early native institutions over the Indian mind was found to have remained so firm, that it was considered expedient to retain the old national system of inheritance and adoption amidst the most sweeping changes which had been introduced in the administration of the country and in judicial procedure. It was the desire to ascertain the authentic opinions of the early native legislators in regard to these subjects which led to the discovery of Sanskrit Literature. European Sanskrit Philology may be said then to owe a debt of gratitude to the memory of the ancient Sanskrit Lawyers of India, and there is no better way of repaying this debt than by carefully studying their compositions. Nothing can be more satisfactory to the Sanskritist besides than to follow in the wake of scholars like Sir W. Jones and Colebrooke, who in this city nearly a century ago have laid the foundation both of Sanskrit Philology and of the study of Indian Law.

Advantages of the historical method.

It is with the antiquarian, and not with the practical, aspect of this system of legislation that I shall have to deal with. The University of Calcutta, by fixing the subject for this course of Lectures in the way in which they did, have shown their genuine appreciation of purely scientific research in the department of Indian Law. A discussion of modern case-law and, in particular, of those changes which have been wrought on the law of the Sanskrit treatises by the decisions of the Courts, does not enter into the scope of these Lectures at all. It is certainly not saying too much, however, that a scientific—*i.e.* a historical—study of Indian Law is capable of producing immediate and tangible results even for the practical ends of the professional lawyer. Generally speaking, the historical method has been successively applied to all the more important legal systems of Europe, with such complete success, that its thorough application to the study of Indian Law has become a necessity. It is impossible to obtain a real insight into the principles of any legal system without knowing its history. But many questions of detail even that have arisen for decision in the Courts, naturally fall within the province of the Sanskritist and antiquarian rather than of the lawyer. Supposing a Judge or Pleader in one of those European countries where Roman Law is still in force were to appeal to a passage of doubtful import in the Digest of Justinian, and would try to put a new construction of his own upon it, without being acquainted with Latin, his opinion even if correct would not carry the least weight with it. The same principle does not seem to have been maintained in the analogous case of the interpretation of Sanskrit Law-texts in India.

Comparative Jurisprudence.

It should also be borne in mind that there is no better way for getting over that supposed dryness, which has been a standing reproach to the study of Hindu Law, than by glancing at it from a historical point of view. I never could help wondering, when I was told by professional lawyers or by brother Sanskritists, that they consider Hindu Law as an uninteresting and even repulsive subject, and I feel persuaded that it cannot fail to interest any one who studies it historically. Among students of Comparative Jurisprudence in Europe, the legal history of India is becoming quite a favourite subject. For all researches into the early history of institutions, India is the very country. Moreover, in spite of its generally archaic character Indian legislation in some respects has early reached a degree of perfection equal or superior to anything to be met with in the contemporaneous law-codes of Europe. Let me give you one example from that part of the old Indian Law which is still enforced in the Courts. One of the fundamental principles of the Law of Inheritance in Roman Law and in the modern legislations of Europe is what is called the right of representation. Where, *e. g.*, the estate of a man descends on his death to his grandsons, they do not take it in their own right, but as representatives of their predeceased father or fathers, and the amount of each share is regulated according to the number of the deceased owner's sons, and not according to the number of his grandsons. This rule, simple and obvious as it appears to us, has been vainly sought for in the old Teutonic Laws, but it is enounced as distinctly as possible in the old metrical law-books of India, and worked out in detail in the Sanskrit Commentaries and Digests.

Recent progress in the study of Indian law.

It is indeed quite recently only that a comprehensive study of the legal history of India has become possible, owing to the rapidly progressing recovery and publication of the principal sources of Indian Law. The Commentaries and Digests, which will form the subject of the present Lecture, are of paramount importance in settling the modern Law of Inheritance, Partition, and Adoption. Nevertheless, the accretions to our knowledge of these works have been comparatively trifling during more than half a century after the epoch of Colebrooke. It is only within the last twenty years that such important works as the Vivādachintāmaṇi, Vīramitrodaya, Smṛitichandrikā, Mādhavīya, and Sarasvatīvilāsa have become accessible to the general reader through the medium of English translations. What is even more important for the progress of Indian Law studies, the systematic search for MSS. recently instituted both by Government and by private persons in every part of India has succeeded in dragging into light a number of important law-books which had escaped even the notice of Colebrooke, extensive as his collection of legal Sanskrit MSS. certainly was. It is chiefly of these recently discovered works that I intend to speak in this Lecture, but I will also advert to some points of interest that have come to light in regard to the history of works long since known. Some questions of a more general nature may be advantageously reserved for discussion at the close of this Lecture, when it will be seen in what manner the solution of these questions has been facilitated by the new discoveries referred to.

The Commentaries.

The Commentaries, as a class, are older than the Digests (Dharmanibandhas), and it is natural that they should be so. When the early law-books of the Smṛiti period had ceased to be readily intelligible, the next thing to do would be to compile good Commentaries on them, and systematic expositions of the law, based on these Commentaries, would follow in due course. Here it should be noted, however, that the earliest Commentaries which in this as in other branches of Sanskrit literature pass under the name of Bhāshyas are extremely copious works. The writer of a Bhāshya, far from confining himself to the elucidation of difficult passages in the work he is commenting upon, will introduce a good many disquisitions on kindred subjects, and the connection of these subjects with the scope of the original work is a very remote one indeed in many instances. The more recent Commentaries which are variously designed as Vṛittis, Vivṛitis, Vivaraṇas, Ṭīkās, etc., are as a rule less prolix than the Bhāshyas. Nevertheless, the size of some of those Ṭīkās, which are commentaries of commentaries, is very considerable.

Asaháya.

Asahāya's Bhāshya of the Nārada-smṛiti[1] is probably the oldest Law Bhāshya in existence. The name of Asahāya has been sometimes taken for a mere epithet denoting 'peerless,' and used to qualify the name of the renowned commentator Medhātithi, with whom Asahāya is frequently associated in the law-books.[1] Colebrooke, however, while giving this interpretation on the authority of Bālambhaṭṭa, has pointed out himself that the word 'Asahāya' is used as a proper name in an old Digest, the Vivādaratnākara. In other works[2] also Asahāya is frequently quoted or referred to as distinct from Medhātithi, and the existence of this author has now been placed beyond doubt by the recovery due to Professor Bühler of a large fragment of his Commentary of the Nārada-smṛiti. It is true that this work of Asahāya has not been preserved in its original form, but in a revised edition prepared by Kalyāṇabhaṭṭa, who, according to his own statement, recast the composition of Asahāya which had been defaced by the carelessness of negligent scribes.[3] It is quite possible that this remodelling may have wrought a great change on Asahāya's work; at the same time it furnishes valuable evidence in favour of its antiquity, as a long interval of time must have elapsed before it could have become necessary. Direct proof of the early date of Asahāya's Commentary is to be found in the way in which the name of Asahāya is referred to by the later Jurists. Vijnāneçvara (11th century), in the Mitāksharā, is not the only author who quotes him at the head of law-writers and places him before such an old writer as Medhātithi even. In other works too, especially in the Sarasvatīvilāsa, Asahāya is placed first almost whenever his name is associated with the names of other authorities. This is sufficient to show to any one acquainted with Indian habits of expression that Asahāya was looked upon as the earliest commentator of law-works. On the other hand, it is necessary to assign a later date to him than the 5th century A.D., which is about the time when the Nārada-smṛiti was composed.

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[1] As to the Libraries from which the MSS. referred to were obtained, see the List of MSS. consulted, in the Appendix to this work.

His lost commen-

As in several cases the remarks quoted from Asahāya in tary on the Code of Manu.

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[1] Colebrooke, Mitāksh. I. 7, 13, and note; Rajkumar Sarvadhikari's Tagore Law Lectures, p. 325 (1882).

[2] See Index in the Rev. Foulkes's Edition of the Sarasvatīvilāsa; West and Bühler, p. 49. The references to West and Bühler's Digest generally are to the forthcoming 3rd Edition, the joint editors having kindly allowed me to use the proof-sheets hitherto printed.

[3] दृष्ट्वासहायविरचितं नारदभाष्यं कुलेखकैर्भ्रष्टम्। कल्याणेन क्रियते प्राक्तनं तद्विशोध्य पुनः ॥

the Digests relate to texts of Manu, he may be supposed to have written a Commentary on the Code of Manu, besides his Commentary on the Nārada-smṛiti, and this supposition is rendered nearly certain by a passage of the Sarasvatīvilāsa.[1]

Medhátithi's Manubháshya.

The next oldest work that has been preserved, the famous Manubhāshya of Medhātithi, is also a Commentary on the Manu-smṛiti. It must have been composed in the 8th or 9th century A.D.[2] In spite of Medhātithi's early date, Asahāya was not the only author who preceded Medhātithi in commenting on the Code of Manu. On the contrary he often refers to three or four different interpretations proposed by other commentators of difficult terms or sentences in the Code of Manu. Unfortunately, he does not mention any one of his predecessors by name. Those works which he does quote by name, such as the Gautama, Apastamba, Vishṇu, Yama, Nārada and other Smṛitis, Kumārila, Jaimini's Philosophical Aphorisms and Patanjali's Mahābhāshya are nearly all of considerable antiquity. In one place he denotes the Smṛiti writers by the appellation of Dharmasūtrakāras, "authors of Dharmasūtras," which ancient designation of the Sūtra works on law is very seldom found in the other Commentaries. As for the native country of Medhātithi, it has to be looked for in the South, rather than in the North, as the name of his father Vīrasvāmin terminates in 'Svāmin,' which is a very common ending in South Indian names, and as he is quoted by such early South Indian authors as Vijnāneçvara (12th century),[3] Devaṇṇabhaṭṭa (13th century),[4] and Hemādri (12th or 13th century), whereas the earliest authors of the Bengal School, such as Jīmūtavāhana and Raghunaṇḍana, do not allude to the writings of Medhātithi, though they quote other commentators of Manu.

Restored by Madanapála.

Nevertheless, it is to the ruler of a North Indian State, King Madanapāla of Kāshṭhā, that the preservation of Medhātithi's Commentary appears to be chiefly due. The old tradition to that effect was already known to Colebrooke, stating as he does that the Commentary of Medhātithi having been partly lost has been completed by other hands at the Court of Madanapāla, a Prince of Digh. This meritorious deed of Madanapāla, who appears to have reigned in the 14th century,[1] is extolled in a Sanskrit verse, which I have met with in seven old MSS. of Medhātithi's Commentary, from divers parts of India.[2] That the original work of Medhātithi should have undergone any considerable change at the hands of King Madanapāla or his advisers is far from probable. It is true that the now existing MSS. of Medhātithi's Commentary differ occasionally from one another and from the *textus receptus*. Thus the 8th chapter has only 348 Çlokas in one India Office MS. to the 420 Çlokas of the *textus receptus*, and the 9th chapter is wanting altogether in most of the MSS. But the fact of the Sanskrit verse referred to occurring in so many MSS. renders it very likely that all the now existing copies of Medhātithi's Commentary are derived from the copy prepared by King Madanapāla or by his *adlatus*, the well-known Jurist Viçveçvara. The discrepancies referred to must, therefore, be of modern growth. Nor does that Sanskrit verse imply that the original composition of Medhātithi was altered or added to by Madanapāla, though one might be led to think so from the terms used by Colebrooke. The whole traditional statement about King Madanapāla really comes to this that he procured MSS. of

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[1] § 33, where the authors of the Manu, Yājnavalkya and other Smṛitis are referred to by the side of Asahāya, Medhātithi, Vijnāneçvāra, Aparārka and other commentators of these Smṛitis. The two last writers being Commentators of Yājnavalkya, it follows that Asahāya is here referred to, together with Medhātithi, as a Commentator of Manu.

[2] West & Bühler, p. 49.

[3] Mitāksh. I. 7, 13.

[4] Medhātithi is quoted three times in the Sāhasa section of the Vyavahārakāṇḍa of the Smṛitichandrikā (untranslated).

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[1] See *post*, p. 15.

[2] I am indebted to Professor Bühler for communicating to me his opinion about this stanza, which is more or less incorrectly given in all MSS. The best readings on the whole, I think, are those found in an old Benares MS.

मान्या कापि मनुस्मृतिस्तदुचिता व्याख्या हि मेधातिथेः
सा लुप्तैव विधेर्वशात्क्वचिदपि प्राप्यं न यत्पुस्तकम्।
क्षोणीन्द्रो मदनः सद्धारणसुतो देशान्तरादाहृतै- (°हृतौ Benares MS.)
जीर्णोद्धारमचीकरत्तत इतस्तत्पुस्तकैर्लेखितैः ॥

"Any Smṛiti of Manu should be respected, as well as the current gloss on it by Medhātithi. The latter had been destroyed by the decree of fate. King Madana, the Son of Sādhāraṇa, acquired the merit of *jīrṇoddhāra* (restoring what had been destroyed) in regard to this book, which was not to be found anywhere, by causing a copy to be taken of it after he had procured it from a different country."

LECTURE I.

Medhātithi's Commentary from abroad and got them copied, because in his own country no copy was to be had.

Medhā-tithi's Smṛiti-viveka.

Before compiling his Commentary on the Code of Manu, Medhātithi appears to have written a law-digest, called the Smṛitiviveka. This work is repeatedly quoted by him in his Commentary as containing a full exposition of doctrines touched on incidentally in the latter work.

His merit as a commentator.

Judging from the numerous references to the opinions of Asahāya and Medhātithi in the more recent law-books from the Mitāksharā downwards, the influence exercised by these two authors, especially the latter, on the development of Jurisprudence in India, must have been very considerable. Nor is this wonderful, considering the vast amount of matter contained in Medhātithi's immense volume. Jones and Haughton have charged it with prolixity and obscurity; nor is this charge wholly unfounded, looking at this work in the light of a mere Commentary. It abounds more than any other law-book in Mīmāmsā terms and dissertations. But it also contains a host of interesting observations on the every-day life of the period, and it is simply invaluable as being the earliest extant Commentary of the Code of Manu, and as recording the opinions of a number of earlier writers on every difficult passage in that work.

Other Commentaries.

The influence of Medhātithi on the development of Indian Law is exhibited with particular clearness in the numerous subsequent Commentaries by which his own Bhāshya was followed and gradually superseded in authority. Sir W. Jones in the preface to his translation of Manu, and Colebrooke after him, quotes four commentators of that author:—

1. Medhātithi.
2. Govindarāja.
3. Dharaṇīdhara.
4. Kullūkabhaṭṭa.

However, recent research in this field has brought to light seven old Commentaries of the Code of Manu, besides disclosing the former existence of a number of other works of this class that have now been lost.

Govinda-rāja.

From the way in which Kullūka refers to Medhātithi and Bhojarāja, it is clear that he looked on the former as being the oldest, and on the latter as being the next oldest, commentator of Manu.[1] Govindarāja, in his opinion, was

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[1] Kullūka's gloss on III. 127 . . . . . "Medhātithi, Bhojarāja and others who belong to an earlier time even than Govindarāja." See, too, his gloss on VIII. 184, as quoted in the next note.

LECTURE I.

decidedly posterior and inferior in authority to those two ancient authors, and in many passages of his Commentary Kullūka may be seen engaged in refuting the opinions of Govindarāja, which, as I have found, has not prevented him from transcribing *verbatim* large portions of his work without acknowledgment. To Govindarāja, and not to his follower Kullūka, belongs by right the rather exaggerated eulogium bestowed on the latter work by Sir W. Jones, who says of Kullūka's Commentary that it is the shortest, yet the most luminous; the deepest, yet the most agreeable Commentary ever composed on any author, ancient or modern, European or Asiatic. Again, it is not Kullūka as Haughton has asserted, but Govindarāja, by whom "the gist of Medhātithi's remarks has been condensed in an admirably clear and masterly style." Where Govindarāja has departed from the opinions of his predecessor, he has not always done so with success.[1] As regards the date of Govindarāja's work, it must be decidedly more recent than the lost Commentary of Bhojarāja, which belongs to the 11th century. The lower limit is furnished by the fact that Govindarāja's Manu-ṭīkā is quoted in the Dāyabhāga and in Nārāyaṇa's Commentary, both of which works cannot be placed later than the 15th century. The fact of Govindarāja being quoted in the Dāyabhāga stands in the way of his supposed identity[2] with Govindachandra, a king of Benares, who was contemporaneous with Nṛisinha, a law-writer of the 15th century. He might rather be identified with another Govindachandra, who reigned in Canouj in the 12th century.[3] The MS. of his work gives no clue to his date and parentage except that it styles him the son of Mādhava, and it is not certain that he was a royal author.

Náráyaṇa

The Manvarthavivṛiti, or Manvarthanibandha, of Nārāyaṇa

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[1] Thus the order of the three çlokas, VIII. 182—84, is strangely inverted in the Commentary of Govindarāja. By doing so, says Kullūka, he has disturbed the natural order of ideas in that passage, and has offended against the ancient tradition, as represented by the works of Medhātithi, Bhojarāja, and others. The correctness of the latter observation is confirmed by the MSS. of Medhātithi's Commentary. In commenting on VIII. 123, Govindarāja interprets विवासयेत् by नग्नीकुर्यात्. "He shall strip (a Brahman who is a false witness) of his clothes." According to all the other commentators it means "he shall banish him." This is no doubt the correct explanation.

[2] Rajkumar Sarvadhikari.

[3] Colebrooke.

LECTURE I.

Sarvajna or Sarvajna Nārāyaṇa comes next. This is a brief but ambitious Commentary. It explains selected passages only, and does not repeat the whole text of the Code of Manu. Nārāyaṇa differs from his predecessors wherever it is possible to do so, and a Çloka recurring at the end of several sections of his work claims for him the merit of having entirely superseded through his gloss the bad Commentaries composed by other authors.[1] Though Nārāyaṇa's explanations deserve careful consideration in every case, as we shall have occasion to observe in the course of these Lectures, the desire to be original has sometimes tempted him into interpreting his text in a highly artificial manner. The native country of Nārāyaṇa may perhaps be inferred from the circumstance that all the MSS. hitherto discovered of his work have turned up in Western India.[2] The earlier limit of the composition of his work is furnished by the fact that he quotes Govindarāja (in the gloss on VIII. 123) and the lower limit by the time in which the MS. discovered by Professor Bühler has been written, *viz.*, A.D. 1497.

Kullúka.

All the Commentaries hitherto mentioned have been undeservedly put in the shade by the renowned gloss of Kullūkabhaṭṭa, called Manvarthamuktāvalī. This work has been used as the sole basis of all hitherto published editions and translations of the Code of Manu, excepting perhaps M. Loiseleur Deslongschamps's French translation, for which the Commentary of Rāghavānanda has now and then been used along with Kullūka's gloss. Kullūka states in the preface to his work, that he compiled it in Benares, whilst Bengal was his native country. His countryman Raghunaṇḍana is the earliest author with a known date who quotes Kullūka, whereas Jīmūtavāhana, who lived before Raghunaṇḍana, does not quote Kullūka, but his predecessor Govindarāja. Kūlluka's epoch therefore would fall between the early part of the 16th century, when Raghunaṇḍana flourished, and whatever date may be assigned to Jīmūtavāhana. He could hardly have lived before the 15th century.

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[1] श्रीनारायणसर्वज्ञकृतवृत्तिर्मनुस्मृतेः । कुनिबन्धकृतव्याख्यामियं दूरे निरस्यते ॥

[2] Thus in III. 16, he interprets the genitive forms occurring in this çloka as *genitivi originis*, denoting descendants of Gautama, Caunaka, and Bhṛigu, instead of recognizing the correctness of the interpretation adopted by all the other commentators, that they contain the names of law authors, who are referred to as authorities by Manu. See P. von Bradke on the Mānava Gṛihyasūtra, Journ. Germ. O. S., vol. xxxvi.

Rághavánanda.

Raghunandana has been sometimes identified with Rāghavānanda or Rāmānanda, the author of a valuable Commentary on the Manu-smriti, called Manvarthachandrikā. The remote likeness of the names is however the only foundation for this hypothesis. This commentator has generally followed Kullūka, but without copying his remarks slavishly, his own observations being sometimes very useful. In several places he refers to Govindarāja and Medhātithi as well, and in the beginning of his Commentary[1] he states that it is based on the works of Kullūka, Nārāyana, Govindarāja, and Medhātithi. By reversing this arrangement the order is received in which these men seem to have succeeded one another in point of time, and Rāghavānanda's statement may be taken to corroborate the correctness of the chronological arrangement proposed above. If Kullūka cannot be referred to an earlier period than the 15th century, his successor Rāghavānanda may be supposed to belong to the 16th century. The fact that Rāghavānanda quotes Çūlapāni points likewise to the 16th century as the *terminus a quo* for the composition of his Commentary. The lower limit of the composition of Rāghavānanda's work falls within the year 1650, which is about the age of the oldest existing MS. of it.[2]

A Kashmirian Commentary.

An anonymous Kashmirian Commentary is found in a birch-bark MS. written in the Çāradā character of the Code of Manu, and may therefore be conjectured to be at least two hundred years old.[3] It is very brief, and seems to follow Kullūka in many places, but it is equally possible that the glosses in question may have been derived in each work from a common source, *e.g.* from Govindarāja's Commentary, with which the Kashmirian Commentary agrees characteristically in the arrangement of Manu, VIII. 182—184.

Nandanáchárya.

Nandanāchārya's Commentary called Nandinī, which explains selected Çlokas only, seems a valuable though modern work. It was composed no doubt by a native of South

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[1] This passage has been printed in Dr. Burnell's Tanjore Catalogue, p. 126.

[2] See *ibid.* In the Deccan College, Puna, I have seen another MS. of this work, recently purchased for Government by Mr. Bhandarkar, which likewise is two hundred years old at least.

[3] Bühler, Kashmir Report, pp. 30, xxiii.

India, as all the hitherto known MSS. of it have been written in South India and agree characteristically in the choice of readings with other South Indian MSS.[1]

Importance of these works.

There is thus a continuous series of Commentaries of the Code of Manu from Medhātithi in the 8th or 9th century down to modern times. The importance of these works for the history of Hindu Law and for a proper interpretation of the Code of Manu is obvious. Manu was looked upon as the first of legislators. The authors of compilations on law are constantly appealing to his enunciations, and in the constructions which they put on them they were naturally guided by the opinion of the authoritative Commentators. These learned men no doubt have twisted the sayings of Manu very much in a great many cases in order to make his ordinances agree with the usages of their own time and with the statements of other legislators. European Sanskrit Scholars will therefore not accept their interpretations without testing them. But the opinions of each one Commentator may be checked by consulting the works of his brethren, and the recovery of the sources of Kullūka and of so many old Commentaries generally, has placed the interpretation of the Code of Manu on an entirely new basis.

Mitakshará

Next to the Code of Manu, the Yājnavalkya-smṛiti appears to have received the largest share of attention on the part of the mediæval law-writers. Three of the Commentaries they wrote on it are now in existence, and a fourth, composed by Viçvarūpa, must have furnished in a great measure the basis of the best known and most important work in the whole department of Hindu Law.[2] I am referring, of course, to the celebrated Ṛiju Mitāksharā Ṭīkā or Ṛiju Sammitāksharā or Pramitāksharā or Mitāksharā simply,[3] a Commentary on the Yājnavalkya-smṛiti, composed by the ascetic Vijnāneçvara of Kalyāṇapura in the Nizām's dominions towards the end of the 11th or beginning of the 12th century. He was a contemporary of King Vikramānka, whose reign falls between the years 1076—1127 A. D.[1] The Mitāksharā has early become the standard work on law in the greater part of India, and its influence on the administration of justice has been increased under British rule through the medium of Colebrooke's translation of the section on Inheritance. This section comprises only a 14th or 15th part of the whole of the Mitāksharā, which is a very ample composition standing on a par with the old Bhāshyas, though it is designed as a Vivṛiti or Ṭīkā in the Colophons. Colebrooke's translation, a masterpiece in its own time, shares to a certain extent the fate of Sir William Jones's translation of Manu and of other productions of the same age, which have become antiquated by the progress of Sanskrit studies. It contains a number of inaccuracies and mistakes, which, however slight in themselves, must not be left unnoticed in the course of these Lectures, on account of their important bearing on divers controverted points in Hindu Law. The Sanskrit text of the Mitāksharā has been frequently printed in India, the new Bombay edition of 1882 being the best, though it is by no means free from mistakes.

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[1] I am referring to certain Grantha and Telugu MSS. collated by the late Dr. Burnell, who was so kind as to allow me the use of his collations.

[2] See Mitāksh. (Sanskrit text) Introd. ; Rajkumar Sarvadhikari's Tagore Lectures, pp. 367, 384.

[3] These various designations have been collected from several old MSS. of the Mitāksharā in Bombay, Puna and Benares.

Aparárka.

The Çilāhāra King Aparārka or Aparāditya, who reigned over the Konkan in the 12th century,[2] wrote a Bhāshya on the Yājnavalkya-smṛiti, which, though less renowned than the Mitāksharā, is frequently quoted in subsequent Digests, such as the Smṛitichandrikā, Chaturvargachintāmaṇi, Madanapārijāta, Dattakamīmāmsā, Vivādatāṇḍava, Sarasvatīvilāsa and other standard works composed in divers parts of India. This Commentary is equal or superior in bulk to the Mitāksharā, and far richer than the latter work in quotations from lost Smṛitis. Aparārka's views often agree closely with those held by Vijnāneçvara, and the fact that he never mentions the Mitāksharā by name, has been explained as a result of Indian etiquette, which does not allow a royal author to notice expressly the opinions of another sovereign's servant by name. It seems more probable, however, that both writers drew from a common source. For it is quite doubtful whether Aparārka knew the Mitāksharā as he may have been for some time contemporaneous with Vijnāneçvara,[3] and as he frequently differs from the latter work about the choice of readings in the texts of Yājnavalkya, and occasionally on questions of principle too. Certain opinions, which have been viewed as peculiar to the Bengal School, may be traced to Aparārka's Commentary, or to the lost writings of his predecessors.

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[1] West & Bühler, 15-17.

[2] Bühler, Kashmir Report, 52; West & Bühler, 18.

[3] Recent researches have shown that two Aparādityas must have reigned in the 12th century, and that the commentary of the Yājna-

Cúlapáṇi.

Several instances of this special agreement of the Bengal writers with Aparārka may be found in Çūlapāṇi's Commentary of the Yājnavalkya-smṛiti called Dīpakālikā. This brief work of a Bengal writer, which is similar in kind to Nārāyaṇa's gloss of the Manu-smṛiti, is decidedly more recent than the other Commentaries, but it can hardly be termed a modern work, as has been done by Colebrooke. It is quoted by Raghunandana, who flourished about the commencement of the 16th century.

Viçveçvara.

Nothing tends better to illustrate the high esteem in which the Mitāksharā was held than the fact, that although a Commentary itself, it was repeatedly commented on by eminent Paṇḍits. Viçveçvara-bhaṭṭa wrote by order of King Madanapāla, son of Sādhāraṇa, his valuable Commentary called Subodhinī or Mitāksharā-ṭīkā Subodhinī or Viçveçvarī which is an independent work rather than a Commentary, as it dwells at much length on some difficult passages in the Mitāksharā, leaving totally out of sight most others. After having written the Subodhinī, Viçveçvara compiled another work on law called Madanapārijāta,[1] which may be advantageously used to supplement the Subodhinī. King Madanapāla, the patron of Viçveçvara, reigned in Kāshṭhā, which was situated to the north of Delhi, on the banks of the Jumna.[2] He is the reputed author himself of a law Digest, called Smṛitikaumudī, which treats of Achāra (religious law) only, and of the Mahārṇava, which is quoted in the Smṛitikaumudī. As however the author of the latter work refers to the Madanapārijāta as to a production of his own, it has been argued with justice that the Smṛitikaumudī too must have been composed by Viçveçvara and not by Madanapāla himself.[3] The same remark applies to Madanapāla's

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valkya-smṛiti was probably composed by the earlier one of the two, one of whose grants is dated A. D. 1138. See Sivaji, Journ. Bomb. Br. R. As. Soc., 1882.

[1] This work contains a reference to the Subodhinī.

[2] See the introductory stanzas to the Madanapārijāta, printed in Professor Aufrecht's Catalogue of the Bodleian Library, p. 274.

[3] See *ibid.*

alleged restoration of Medhātithi's Commentary. Madanapāla's date is referred to the 14th century by Colebrooke, to the 15th century by Dr. Burnell, and to the 12th century by Rajkumar Sarvadhikari. The last of these three dates cannot be correct, as Viçveçvara mentions among his sources the Smritichandrikā and Hemādri's Digest, both of which works were composed in the 13th century in South India, far away from the native country of Viçveçvara. Besides, the writings of Viçveçvara, as far as my present researches go, are not distinctly alluded to by any earlier writer than by Raghunandana, who, as mentioned before, lived in the early part of the 16th century.[1]

Nandapaṇḍita.

One out of the many modern writers who have made use of the writings of Viçveçvara is Nandapaṇḍita, the son of Rāmapaṇḍita, a Dharmadhikari of Benares. His numerous productions include a Commentary on the Mitākshara called Pramitākshara or Pratītākshara. A fragment of this work, consisting of about two-thirds of the first Adhyāya, I have seen in the private library of the learned and able Librarian of the Sanskrit College in Benares, Pandit Dundiraj Dharmadhikari, who is ninth in descent from Nandapaṇḍita. Very likely this work was never finished.

Bālambhaṭṭa.

The Bālambhaṭṭa-ṭikā or Lakshmī-vyākhyāna or Mitākshara-ṭikā Bālambhaṭṭī was either actually composed by a lady, called Lakshmīdevī, whose family name was Payaguṇḍe, or was attributed to her by courtesy. In the former case, the name of Bālambhaṭṭa would have to be taken for her *nom de plume*.[2] In the latter case it might be identified with the name of her son Bālakrishṇa.[3] Professor Aufrecht thinks this work to have been composed in the latter half of the 18th century.[4] It cannot certainly be much older than this, as it contains references to the Vīramitrodaya, Nirṇayasindhu, Vaijayantī and other works composed in the first half of the 17th century. The *terminus ad quem* is furnished by a good Benares MS. written in A.D. 1782.

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[1] Several writers, in discussing the question of Madanapāla's date, have made indiscriminate use of all references anywhere found to a work called Pārijāta. This title is, however, common to several works, and it will be shown in its place that, *e.g.*, a quotation from the Pārijāta in the Vīramitrodaya cannot be traced to the Madana-pārijāta.

[2] West & Bühler, p. 17.

[3] This, and not Nālakrishṇa as in the MSS. consulted by Professor Aufrecht and Rajkumar Sarvadhikari (Lectures 406), is the proper spelling of this name. See too F. E. Hall's Index, p. 175.

[4] Catalogue of the Bodleian Library, p. 262.

LECTURE I.

Vaijayantí.

The Vishṇu-smṛiti appears to have been the subject of much comment among those learned in Sanskrit Law, but we have no means of knowing the contents of early Commentaries on it except through the medium of the quotations from them in Nandapaṇḍita's well-known Commentary, the Vaijayantī. It was composed in 1622, and must have been one of the last productions of its fertile author, as it contains references to three of his previous works, the Dattakamīmāmsā and the two Commentaries on the Mitāksharā and Parāçara-smṛiti.[1] Extracts from the Vaijayantī, together with the text of the Vishṇu-smṛiti, have been published by myself in the *Bibliotheca Indica* (1881). The Vaijayantī has been deservedly designed by Colebrooke as a very excellent and copious work, which might serve like the Mitākshará as a body or Digest of law.

Commentaries on Paráçara.

The Parāçara-smṛiti has been early commented upon by no less a person than the celebrated Mādhava, surnamed Vidyāraṇya, the Prime Minister of King Bukka, of Vijayanagara in the Dekhan, in the latter half of the 14th century.[2] His work, however, can hardly be called a mere Commentary, as far as Civil Law is concerned, as the whole extensive section on the administration of justice has been introduced in the gloss on one verse of Parāçara treating incidentally of the duties of the kingly caste. In the section on Inheritance, which has been translated into English by Dr. Burnell,[3] Mādhava has closely followed the Mitāksharā. Another Commentary on the Parāçara-smṛiti was composed by Nandapaṇḍita. But copious as this work is, the section on Civil Law is extremely brief and insignificant.

Commentaries on Apastamba and Gautama.

Among the few remaining old Commentaries of Smṛiti works, Haradatta's gloss on the Apastambya Dharmasūtra, called Ujjvalā, and his gloss on the Gautama-smṛiti, called Gautamīya Mitāksharā, are perhaps the most important. These two works come up to the true notion of a Commentary in a higher degree perhaps than any of the works hitherto noticed, a philologically exact interpretation of his texts being all that Haradatta had in view. This author was a native of Southern India. His date is uncertain, except so far that he cannot have flourished later than the end of the 16th century.[1]

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[1] It is curious to note, however, that the Dattakamīmāmsā in its turn contains a reference to the Vaijayantī. Could both works have been composed at the same time?

[2] See Dr. Burnell's Dāyavibhāga, and Rajkumar Sarvadhikari, 362—366.

[3] Dāyavibhāga, 1868.

Importance of the Commentaries.

I have dwelt thus long on the Commentaries, because they possess quite a special value and interest to the historical student of Hindu Law, as being indispensable guides to a real understanding of the contents of the Smritis, and as being the sources of most of the doctrines contained in the systematic works on law.

Schools of Law.

The Digests and some of the leading Commentaries are generally considered to belong to five distinct Schools of Law, three in the north and two in the south of India. The notion of Indian Schools of Law has been objected to on general grounds, but these objections have been so well refuted by former Tagore Law Professors[2] that I have nothing to add to their arguments. The only question in my opinion is, whether there are not far more than five Schools of Law. I think there are, and as an instance of a further local centre of Hindu Jurisprudence besides those five, I may mention the town and district of Dowlatabad in the Nizām's dominions.

Hemádri.

One of the oldest and amplest South Indian Digests, Hemādri's Chaturvargachintāmaṇi, which is now in course of publication in Calcutta in the *Bibliotheca Indica*, was composed by the Prime Minister of Mahādeva, a native king of Dowlatabad. Bhao Daji, in his valuable paper on Hemādri's writings,[3] refers his date to the end of the 12th and beginning of the 13th century, and he certainly cannot have lived before that time, as he quotes Aparārka, a writer of the 12th century.[4] Hemādri is frequently quoted in his turn on questions both of religious and of civil law in the Madanapārijāta, Dvaityanirṇaya, Vaijayantī, Nirṇayasindhu, Saṃskárakaustubha and other works. It appears, however, that the section on Civil Law, which has not yet been published, is far less copious than the other portions of his work.

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[1] An old MS. of the Gautamīya Mitāksharā is written A.D. 1597. See Dr. Rajendralala Mitra's Bikaner Catalogue, 390. Professor Bühler states Mitramiçra (beginning of 17th century) to be the earliest author by whom Haradatta is quoted. V. N. Mandlik (Hindu Law, 386 note) thinks Haradatta is quoted by far earlier writers. However, Haradatta's works, to say the least, had not attained notoriety in the times of the Smṛitichandrikā (13th century), a passage from a Bhāshya on the Ápastamba-sūtras being quoted in that work, which cannot be found in Haradatta's Ujjvalā.

[2] Dr. G. D. Banerjee's Strīdhan, pp. 6, 7; Rajkumar Sarvadhikari's Lectures.

[3] Journal Bomb. Dr. R. A. S. IX, 158-161.

[4] Dr. Burnell places Hemādri about 1250 A. D. See Tanjore Catalogue, 128.

Dalapati.

After Mohammedan rule had been established in the country, the study of Hindu Law did not therefore become extinct, and in the 16th century we find Dalapati, one of the ministers of the well-known Nizām Shah dynasty of Ahmednagar, writing an enormous Digest of Law called Nṛisinhaprasāda. This title appears to have been derived from the name of Nṛisinha, who composed the Prayogapārijāta. The Nṛisinhaprasāda consists of twelve sections called Sāras, which may be fitly compared to the twelve Uddyotas of Madanasinhadeva and to the more famous twelve Mayūkhas composed by Nīlakaṇṭha in the 17th century. Civil Law (Vyavahāra) is treated in the fifth Sāra. A complete old MS. of the Nṛisinhaprasāda[1] is preserved in the Sanskrit College Library, Benares. The last part of the introduction[2] runs as follows:—

निजामसाहसाम्राज्यधुरंधरमहीपतिः ।
श्रीनृसिंहप्रसादं तु तनुते धर्मसंविदे ॥
प्रयोगपारिजातादिनिबन्धाः सन्ति यद्यपि ।
शास्त्रज्ञस्त्वेव चात्रापि द्रक्ष्येत्प्रत्यक्षमन्तरम् ॥
श्रीनृसिंहप्रसादेऽस्मिन्निबन्धे धर्मकाङ्क्षकाः ।
सारा द्वादश वै प्रोक्ता द्वादशादित्यसंनिभाः ॥
संस्कारसारः प्रथमो द्वितीयस्त्वाह्निकाभिधः ।
श्राद्धसारस्तृतीयस्तु चतुर्थः कालनिर्णयः ॥
पञ्चमो व्यवहाराख्यः————————

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[1] Two MSS. containing the (6th or) Dāna and (the 10th or) Çānti Sāras are preserved in the Maharaja of Bikaner's Library. See Dr. Rajendralala Mitra's Catalogue, pp. 429-430.

[2] The preceding part of the introduction, which is composed in the Çārdūlavikrīḍita metre, unfortunately is not correctly given in the Benares MS. The general contents of the historical portion appear to be as follows:—The reduction of Devagiri (Deogiri, afterwards called Dowlatabad, see Hamilton's Hindustan II. 148; Hunter's Gazetteer, s. v. Dowlatabad) under the rule of the Emperor (Ala-ud-din ?) of Delhi in the times of King Rāma (Rāmadeva, 1306 A. D. ?) and the subsequent rise of the Nizām Shah dynasty is briefly recorded in one stanza. It is followed by several stanzas extolling "Nizām Shah, the son of the ruler Neba" (श्रीनेबक्षितिपालसूनुमिह तं नैजामसाहं नुमः) in a rather extravagant style. Then the author and his work are introduced. The former is designed as a scion of the Bhāradvāja Gotra of Brahmans, as

"The (Dalapati) who governs the empire of Nizām Shah writes the Nṛisinhaprasāda in order to show forth the law. Though the Prayogapārijāta and other books are in existence, let a man versed in science look in this book too for further information. In this work, the Nṛisinhaprasāda, twelve Sāras are proclaimed, equal to the twelve (rays of the) sun. The Sāra on sacraments is the first, the Sāra treating of daily ceremonies is the second, the Sāra on Çrāddhas is the third, the one recording the proper times for ceremonies is the fourth, the fifth relates to Civil Law," etc. The following Sāras treat of, sixth, *Prāyaçchitta*, Penances; seventh, *Karmavipāka*, Transmigration; eighth, *Vrata*, Religious Vows; ninth, *Dāna*, Religious Gifts; tenth, *Çānti*, Propitiatory Rites; eleventh, *Tīrtha*, Places of Pilgrimage; twelfth, *Devapratishṭhā*, Consecration of Idols.

Toḍarānanda's Saūkshyas furnish another instance of a Digest which does not find a suitable place in any of the traditional five Schools of Indian Law. An old MS., written in A. D. 1581, of the first section of the Vyavahāra Saūkshya, containing the chapter on Civil Procedure and the Law of Evidence, has recently turned up in Delhi, and is now preserved in the Deccan College, Puna.[1] The introductory remarks show that Toḍarānanda is the same man as Toḍaramalla, the able and powerful Hindu Minister of

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श्रीमन्नेबजने समस्तकरणाधीशः "the manager of the whole affairs of Neba (or of the Neba family)" and as श्रीमान्दलाधीश्वरः the noble Dalādhīçvara. Naib is a Mohammedan title, but the Neba or Naib here referred to seems to be Mullik Naib Nizam-ool-moolk Bheiry, as Ferishta calls him, the father of Nizām Shah. the founder of the Nizām Shah dynasty (see Briggs's Ferishta III. 189). If one of the subsequent Nizām Shahs was meant, one might think *e.g.* of Boorhan Nizām Shah II., Bahadur Nizām Shah, or another of the Nizām Shahs reigning towards the end of the 16th century, and might identify the Emperor of Delhi mentioned in this introduction with Akbar. See Ferishta III, pp. 282-320. But the Benares MS. is over 300 years old, the Nṛisinhaprasāda is quoted as an authority in the Cūdra Kamalākara about the commencement of the 17th century, and all circumstantial evidence points to the first Nizām Shah as being the person here meant. His father was by descent a Brahman, and it is no matter of surprise, therefore. to find a learned Brahman minister in his service. As regards the word Dalādhīçvara, it is synonymous with Dalapati, which is the author's name as given in the colophons. Dalapati (Dalavāy in South Indian inscriptions) usually is a title, especially in Bengal, but it occurs as the proper name of a king of Gadha in Jubbulpore in an old Sanskrit inscription. See F. E. Hall in the Journal of the A. O. S. VII, pp. 1-23.

[1] MSS. of the A'chāra, Prāyaçchitta, Cuddhi and several other Saukhyas of Toḍarānanda exist in the Maharaja of Bikaner's Library.

LECTURE I.

the Mogul Emperor Akbar (1556-1605). It fits in with the conciliating spirit of Akbar's general policy that one of the most influential men of his court compiled a bulky Sanskrit work on Hindu Law.

The Five Schools of Law.

Turning to those Five Schools of Indian Law which were already known to Colebrooke, I may observe generally that all the principal works but few of the minor ones have now been translated into English. It is highly desirable that the materials on which Judges are expected to form their opinion about different points in Sanskrit Law should be speedily completed by placing in their hands translations of all Sanskrit treatises of any importance.

Bombay, Benares, Mithilá.

The dates of most of these works are sufficiently ascertained by this time. As regards the law-books prevalent in the Bombay Presidency, I may refer you to the exhaustive treatment of the subject in the introduction to the forthcoming third edition of Messrs. West and Bühler's Digest. The two principal authorities of the Benares School, the Mitāksharā and Vīramitrodaya, are included among the law-books current in Western India. The Mithilā authorities have received an ample discussion in the Preface to P. C. Tagore's Vivādachintāmaṇi and in Rajkumar Sarvadhikari's Tagore Law Lectures.

Madras Digests.

A signal advance has been recently made in the study of the Madras authorities, all the five standard works current in that Presidency having now become accessible through the medium of English translations. The Mitāksharā and Mādhavīya Commentaries have been referred to before. Devaṇṇabhaṭṭa's Smṛitichandrikā has been translated in 1867 by Kṛishnaswamy Iyer, Varadarāja's Vyavahāranirṇaya in 1872 by Dr. Burnell, and Rudradeva's Sarasvatīvilāsa in 1881 by Mr. Foulkes, who has published the Sanskrit text of that work at the same time. The Dāyabhāga from the Smṛitichandrikā has been published in the original Sanskrit by Bhārat Chandra Çiromani in Calcutta (1870), but a comparison of this edition with three good MSS. has shown that it cannot be relied upon everywhere. Devaṇṇabhaṭṭa's Smṛitichandrikā is remarkable alike for its originality and for its early date. Though following the Mitāksharā on most points of importance, it introduces a great deal of new matter as well, as an instance of which I may mention the interesting chapter on dominion over Strīdhana, and quotes many Smṛiti texts not found in the earlier work.

Smṛiti-chandriká.

Varada-rája.

Other Madras Digests.

Devaṇṇabhaṭṭa is a Telugu name.[1] The date of the author of the Smṛitichandrikā may be inferred from the fact that he quotes Aparārka (12th century) and is in his turn quoted by Mādhava (14th century). He must have lived therefore in the 13th century. King Pratāpa Rudradeva in compiling the Sarasvatīvilāsa has mostly followed the Mitākshara and Smṛitichandrikā. However, he does not refrain from occasionally taxing the author of the former work with inflatedness or stupidity (§ 404). The date of this work has been fixed by Mr. Foulkes at about 1515. Varadarāja's treatise, which appears to have been composed in the Tamil country about the end of the 16th or beginning of the 17th century, follows the older works nearly everywhere, and is more rich in quotations of Smriti texts than in independent disquisitions. Both the work of Varadarāja and the Dāyadaçaçlokī, a very brief and modern treatise, have been translated by Dr. Burnell. A number of other Digests preserved in South Indian Libraries, such as Nṛisiṇha's Prayogapārijāta,[2] Vaidyānāthadīkshita's Smṛitimuktāphala (written c. 1600), King Bhūlokamalla Someçvara's Abhilāshitārthachintāmaṇi (c. 1130), King Çarabhoji's Vyavahāraprakāça (beginning of 19th century) and others have been noticed and briefly described by the same scholar in his valuable catalogue of the Tanjore Palace Library.

Jímútaváhana's Dáya-bhága.

The celebrated Dāyabhāga of Jīmūtavāhana, which will always occupy one of the foremost ranks in Hindu Law literature, as being not only the leading authority of the Bengal School, but one of the most striking compositions in the whole department of Indian Jurisprudence, can now be shown to be an undoubted production of Bengal. This appears clearly from the fact that Kamalākara in the Vivādatāṇḍava speaks of "Jīmūtavāhana, Çūlapāṇi, Smārtagauḍa and other eastern (*i.e.*, Bengal) authors."[3] Colebrooke's conjecture, that the author of the Dāyabhāga might be identical with the founder of the dynasty of Çilāhāra in Western India is no longer tenable since the fabulous character of that sovereign, well known as the hero of the Buddhist mythical play Nāgānaṇḍa, has been proved.[1] As in the passage quoted before from the Vivādatāṇḍava, Jīmūtavāhana is mentioned at the head of the Bengal authors, he must be the oldest writer of that School, and not only older than his follower Raghunaṇdana, who lived about the commencement of the 16th century, but older than Çūlapāṇi as well, who is quoted by Raghunaṇdana. An old MS. of another work composed by Jīmūtavāhana, the Dharmaratṇa, is dated A. D. 1495.[2] On the other hand, Jīmūtavāhana cannot be referred to an earlier period than the 13th century, because he quotes Govindarāja's Commentary of the Code of Manu, which, as shown before, appears to have been written in the 12th century. Nearly all the more recent productions of the Bengal School have been noticed very fully by Colebrooke and others.[3] I have not met anywhere however with a reference to a work entitled Vivādārṇavabhanjana, which apparently belongs to, or has been strongly influenced by, the Bengal School. It must not be confounded with the Vivādabhangārṇava of Jagannātha, though it is a modern work like the latter, and contains references to the writings of Raghunaṇdana, Çrīkrishṇa Tarkālankāra and other modern authors. It seems to be the joint production of several writers.

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[1] Burnell, *ibid*, p. 133. The spelling Devāṇḍabhaṭṭa is pointed out as incorrect by Dr. Burnell.

[2] Dr. Burnell observes that this work cannot be earlier or later than the 12th century; and as the Smṛitichandrikā is quoted in it, he considers the 12th century as the lower limit of the composition of the latter work. It has however been pointed out by R. Sarvadhikari (p. 401) that Nṛisimha quotes Mādhava (14th century). He, therefore, could hardly have flourished before the beginning of the 15th century; nor after that time, as an old MS. of the Prayogapārijāta is dated Samvat 1495 (A. D. 1438). See Dr. R. Mitra's Bikaner Catalogue, p. 439.

[3] जीमूतवाहनशूलपाणिस्मार्तगौडादयः प्राच्याः

Vivádárṇava-bhanjana.

Works on Adoption.

The two best-known treatises on Adoption, *viz.*, the Dattakamīmāmsā and the Dattakachandrikā, have been stated by their translator, Mr. Sutherland, to be the works of South Indian writers, and this statement has been repeated in all the English manuals. It has, however, been pointed out before, that Nandapaṇdita, the author of the Mīmāmsā, lived in Benares in the early part of the 17th century; and the Chandrikā, which seems to be the earlier work, is most probably the production of a Bengal author, calling himself Kubera.[4] This is the author's name as given in the MSS. I have seen in the printed edition, and though Kubera refers to the Smṛitichandrikā, as to a former work of his, there is no authority for identifying this work with the well-known South Indian Compilation of that name. This mistake regarding the native country of these writers has proved to be of a rather serious nature, as it has caused their compositions to be viewed as possessing authority in the Dekhan, though such notoriety as now belongs to them in the provinces south of the Narmadā river has only come to them in consequence of their having been translated into English. Among those writers on Adoption, whose authority in the South is of long standing, Çankarabhaṭṭa of Benares is particularly conspicuous. He lived in the second half of the 16th century, and was the father of the famous Nīlakaṇṭha, the author of the Mayūkhas. The Law of Adoption has been treated by him in a brief but interesting chapter of his extensive work on law, called Dvaityanirṇaya. In the introduction to this work he says expressly that he has followed the established usages of the South. The text and an English translation of the chapter on Adoption have been given by V. N. Mandlik in his Hindu Law.[1] The highly important passage on the legality of adopting a sister's son had already been pointed out by Dr. Burnell in his Tanjore Catalogue (p. 134). It will be seen in a subsequent Lecture, how much variety of opinion exists among the writers on Adoption generally, and much use will be made of that valuable collection of texts on Adoption, from seven important works, which has been published by P. C. Tagore, the founder of the Tagore Lectures.[2] This work hitherto has not been translated into English, and the Dattakamīmāmsā and Dattakachandrikā have furnished almost exclusively the scanty basis on which the modern Law of Adoption has been raised.

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[1] See Indraji's and Telang's papers on inscriptions of Cilāhāra kings, Journal Bomb. Branch R. A. S. 1877, p. 5; Ind. Ant., 1877, p. 39.

[2] Dr. Rajendralala Mitra, Notices of Sanskr. MSS., III, p. 297.

[3] See Dr. R. Mitra *ibid*, *passim*.

[4] In the opinion of eminent Bengal Pandits, Kubera is merely a *nom de plume*, the author's real name being contained in a verse at the end of the book and identical with the name of a Bengal writer of the last century. See, too, Mandlik, pp. lxxii—lxxiv.

Two general questions.

Even in the present imperfect state of our knowledge of the external history of the modern law-books, it will not be out of place to discuss two vexed questions connected with the internal history of these works, which are fraught with peculiar interest to the practical student of Hindu Law.

Origin of the difference between the

The first question concerns the origin of that wide gulf, which separates the Bengal writers from their brethren in all other parts of India. This fact has been pointed out

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[1] I, p. 41, *seq.*; II, p. 54 *seq.*

[2] Dattakaçiromaṇi, Calc., 1867.

Bengal School and the other Schools.

long ago by Colebrooke, but he was not in a position to explain it, as he was not acquainted with the date and native country of either Vijnāneçvara or Jīmūtavāhana. This is different now, and it has become possible to show that not only the Mitāksharā, but nearly all the really ancient Commentaries and Digests of note, were composed in the Dekhan. Nor is it difficult to account for this fact. It will be seen in the next Lecture, that several of the earliest Smṛitis have originated in the south of India. When the era of Commentators arrived, the Dekhan continued to be a seat of legal learning, and the spread of South Indian law-books into Hindustan was favoured by the wide sway of powerful South Indian dynasties. Nor was there ever a break of tradition in Southern India, whereas in most parts of Hindustan Proper the composition of law-books seems to have come to a dead stand-still for a considerable time after the permanent establishment of Mohammedan rule towards the end of the 12th century. When at a subsequent period, a revival of Hindu Law studies took place in those parts, the works coming from the Dekhan maintained their repute, and were used as text-books. Thus it has come to pass that King Aparārka's Commentary, which may have been brought into Kashmir by one of the ambassadors of Aparārka, has remained there down to this day, almost the only law-book used by the Paṇḍits of that country.[1] When in the 14th or 15th century, Viçveçvara of Kāshṭhā near Delhi undertook by order of his King, Madanapāla, to set forth the doctrines of the Hindu Law in two learned works, he began by writing a Commentary on the Mitāksharā. It is to the same King Madanapāla that a traditional account, which has been quoted before, attributes the merit of having recovered the lost Commentary of Medhātithi. Its loss may have been due to the raids of the Mohammedans, and the foreign country from which he recovered it may have been the Dekhan. In the second half of the 16th century, when Çankarabhaṭṭa, a member of the influential family of the Bhaṭṭas in Benares,[2] wrote his solution of doubtful points (Dvaityanirṇaya), he thought fit to declare expressly in the introduction to his work that he would take the opinions of the southern writers for his guide.[3] The Mitāksharā was held in such high esteem in Benares that the Native Judges, previous to the establishment of English tribunals in that place, asked the Paṇḍits in each arising case to consult the Mitāksharā. Much the same custom appears to prevail in the present day, in Adoption cases at least, in the Native States of Rajputana.[1]

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[1] Bühler, Kashmir Report, pp. 50-52

[2] Mandlik, p. lxxi.

[3] दक्षिणात्यमते स्थित्वा

Rise of the Bengal School.

The authority attributed to the teaching of the southern writers accounts for the thorough agreement of the majority of the northern Digests with the Mitāksharā. But why do the Bengal writers differ from the rest? Most probably, the isolation of the Bengal School is more apparent than real. The loss of so many old law-books and of many works quoted in the Dāyabhāga in particular, renders it impossible to establish all the intermediate links which must have existed between the Bengal doctrines and the teaching of the other Schools. Even as it is, some of Jīmūtavāhana's doctrines may be traced to their source in those texts which are so strenuously controverted in the Mitāksharā, and it is a significant fact that he quotes Vijnāneçvara's predecessor Viçvarūpa, though he never quotes Vijnāneçvara himself. In the constructions which they put on the texts of Yājnavalkya, the Bengal writers do not seldom concur with Aparārka. They might have borrowed from him, but it seems more likely that both Aparārka and the Bengal writers drew from a common source, *viz.*, from the earliest Commentaries of the Yājnavalkya-smṛiti. The Bengal doctrines are also in a number of cases identical with those held by the Mithilā writers, and as Mithilā has evidently been one of the oldest seats of legal learning in Northern India, the Bengal writers may be supposed to have borrowed those doctrines from their Mithilā neighbours. Whether these various doctrines were shaped into a system by Jīmūtavāhana himself, or by earlier writers, whom he may have followed, it is impossible to decide. His system, as a whole, was certainly very much opposed to the Mithilā system, and even more different from the Mitāksharā system. Jīmūtavāhana's Commentators suppose him to be engaged in many places in refuting the Mitāksharā and the Mithilā doctrines, though he does not say so expressly. Supposing this assertion to be correct, it is still highly improbable that the whole Dāyabhāga system should have been started in opposition to the Mitāksharā. It is far more likely, considering its generally conservative character, which will be pointed out in the course of these Lectures, that its roots reach back into the times before the Mitāksharā was written. In connection with this subject, I may remind you of the old tradition, which dates the growth of Sanskrit learning in Bengal from the immigration of the five Brahmans from Canouj, in the eleventh century or earlier. At that time the Mitāksharā could hardly have been written or obtained ascendency in India, but the opposite systems of earlier writers could.

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[1] My information in regard to this subject is mainly derived from communications made to me by a Jeypore Thakur. Kaunar Prithi Snighji of Bayroo, who also gave me an opportunity of assisting at the trial of an interesting Adoption case according to Hindu Law, in the Supreme Court of Jeypore.

Benares School.

The ability and skill displayed by the Bengal writers in maintaining and developing their own system must soon have rendered them formidable opponents to the adherents of the Mitāksharā in Benares, between which city and the province of Bengal a lively intercourse may be supposed to have existed. Accordingly, the standard writers of Benares in the 17th century, such as Mitramiçra, Kamalākara, Nandapaṇḍita and others may be seen constantly engaged in refuting the opinions of Jīmūtavāhana, Çūlapāṇi, Raghunandana and of the eastern or Bengal writers (*prāchyāh, gauḍāh*) generally, not only on questions of Inheritance, but on other topics as well.[1] It is true that their general hostility to the Bengal School has not prevented these Benares writers from tacitly adopting their views in some instances, and they occasionally express their distinct disavowal of this or that Mitāksharā doctrine. But such cases are comparatively rare, and it is a significant fact that the works of Nandapaṇḍita, who differs more strongly from the Mitāksharā than any of his brethren, do not seem to have acquired any authority outside of Benares, whilst Kamalākara and Mitramiçra, though writing in the North, became authorities in the country of the Mahraṭṭas as well. The Mitāksharā had always retained its ascendancy in Western India, and the Vīramitrodaya reads much like a Commentary of the Mitāksharā.

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[1] As an instance of the strong language used by these writers in controverting the opinions of the Bengal authorities, it may be mentioned that Kamalākara in the Vivādatāṇḍava speaks of a certain doctrine, held in the Bengal School as being "an absurd opinion originating in aversion to the Mitāksharā" (मिताक्षराप्रद्वेषजं मौर्ख्यम्।) Nevertheless, the Benares works exhibit in some of their doctrines the influence of the Bengal School, as will be noticed in the course of these lectures; and where they differ from the Mitāksharā, their authors are perfectly frank in avowing their dissent.

Question as to practical value of the Sanskrit law-books.

I may now pass to the second question, which concerns the practical value and applicability of the legal rules embodied in the Commentaries and Digests. Do these laws, it has been asked, correspond in any appreciable degree to the actual usages of the community at large, and are they not rather mere speculations put forth by the Brahman writers, by whom the composition of law-books had been monopolized? This is the view lately started by some writers of note, and if it were to gain ground among the public at large, the last hour could soon have struck for the administration of Sanskrit Law in India. It is quite necessary, therefore, to go into the merits of the case; but as it is impossible to discuss such a wide subject as this fully at the close of a lecture, I will confine myself for the present to pointing out the bearing of some of the historical facts noticed before on the solution of the important question in hand.

Rank and position of their authors.

It will be readily conceded that the range and degree of authority attaching to a literary composition, and to a work on Law and Jurisprudence more particularly, must depend in a great measure on the rank and position of the author. Now it appears that a large number of law Commentaries and Digests have been written either by Indian Kings and Prime Ministers themselves, or at least under their auspices and by their order. Thus, in the 11th century King Bhoja of Dhārā, in Malwa, wrote his last Commentary on the Code of Manu. In the 12th century, King Aparārka of Konkan compiled his well-known gloss of the Yājnavalkya-smriti. In the 14th century, Queen Lakshmīdevī of Mithilā (Tirhut) composed the Vivādachandra. In the 16th century, King Pratāpa Rudradeva of Orissa wrote the Sarasvatīvilāsa. As late as in the beginning of the present century, Raja Çarabhoji of Tanjore wrote the Vyavahāraprakāça. It is, of course, impossible to say how much of these learned compositions is due to the royal authors themselves, who lent their names to them. But supposing even that they were not to have written a single line themselves of most of the works attributed to them, the fact remains that they suffered them to be published under their own names and to be invested with the authority attaching to the composition of a royal author. As regards those treatises which profess to have been composed by ministers of kings and other influential persons, there exists no *a priori* reason for questioning the exactness of this tradition. Many Hindu statesmen were men of letters. They were no doubt in a position to claim the constant advice and assistance of the most learned Paṇḍits of the time. But this circumstance, while detracting, perhaps, from their individual merit as writers, tends to enhance the value of their compositions. Of the Hindu Ministers, whose learned works on law have been preserved, it will be sufficient to mention the following. Halāyudha, the author of a copious work on the sacred duties of a Brahman (Brāhmaṇasarvasva), was Minister to King Lakshmaṇasena of Bengal in the 12th century. Hemādri held the same office under a native chief of Dowlatabad in the 13th century, and Dalapati, the author of the Nṛisiṇhaprasāda, occupied an influential position under the Mohammedan rulers of the same district in the 16th century. Mādhava was Prime Minister in the kingdom of Vijayanagara in the Dekhan in the 14th century. Chaṇḍeçvara, the author of the Vivādaratnākara, was the Minister of King Harasiṇha Deva in Mithilā, in the same century. Toḍarānaṇḍa or Toḍaramalla, the celebrated Hindu Minister of Akbar, compiled a work on Civil Law, called Vyavahārasaūkshya, during the reign of that well-known Mogul Emperor. Of many other works composed by learned Paṇḍits, we know that they were written under the patronage of Rajahs. Thus, Mitramiçra dedicated his renowned composition, the Vīramitrodaya, to the Bundela chief, Vīrasiṇha (Bir Singh Deo Bundela) of Orccha, infamous as the murderer of Abul Fazl. Nandapaṇḍita wrote the Vaijayantī by command of the Rājah Tammasanāyaka, of Benares. It would be easy to multiply examples. Let me only add that the famous Vijnāneçvara may be supposed to have composed the Mitāksharā at the instigation of a King. He extols Vikramānka, the ruler of Kalyāṇapura, at the end of his work, and it has been justly observed by Professor Bühler that the authority early accorded to the Mitākshara seems to be due to the wide sway of that powerful King.

Scientific character of Sanskrit law-books.

It may be confidently asserted then that the Supreme Rulers of Indian States in all parts of the Peninsula have always taken an active interest in the composition of Law Digests and Commentaries, and this fact must needs raise a strong presumption in favour of the practical nature of these works. On the other hand, it is out of the question to compare them in any way to the law-codes of modern Europe. They may be said to find their counterpart, to a certain extent, in the scientific treatises on Jurisprudence, which in some European countries are constantly quoted in judicial decisions, and have influenced the decisions of the Courts and Legislation very considerably. In the same way, whenever a knotty point of law presented itself for solution in an Indian Court, the Judges would consult the Sanskrit treatises either themselves or through the medium of the Paṇdits. The technical language of these works, and the many subtle and sophistic disquisitions and philosophical, grammatical or other theoretical speculations embodied in them, have been pointed out as proving the essentially speculative and unpractical nature of the Sanskrit treatises. But it should be borne in mind that the Dharmaçāstrīs or persons versed in Sanskrit Law who composed these works did not write them for Europeans, but for other Dharmaçāstrīs. Their readers were learned enough to understand and appreciate their ingenious disquisitions, and sufficiently experienced to distinguish the genuine legal rules contained in these works from what was incapable of being enforced as law. This became different, when the administration of the old Indian Law was placed with European Judges, whose knowledge of the subject was, as a rule, confined to the scanty information to be derived from a few translations. Besides, Europeans were naturally prone at first to take the Sanskrit treatises for law-codes in the European sense of the term, instead of using them with caution and checking them by constant reference to customary law. Many of the errors and misapprehensions which had thus arisen in the early times of British rule, have since been removed. The customary law of the country has been given its due weight, and admirable collections of customs have been brought together in different parts of the Peninsula. But the task of understanding a whole fabric of ancient law, such as the Sanskrit Law of India, cannot be accomplished in a day, and much more patient absorption in the habits of mind and expression of the Sanskrit lawyers, and a careful investigation of all their compositions will be required before a full insight into the nature and history of Sanskrit Law can be obtained.

LECTURE II.

NEW MATERIALS FOR A HISTORICAL STUDY OF HINDU LAW.

2. THE PRINCIPAL SMṚITIS.

Smṛiti and Smṛitis. — The other sources of law — Puráṇas — The Veda — Customary law — Administration of justice in the Native Courts — The Smṛitichandriká on local usage — References to custom in the Smṛitis — Importance of the Smṛitis — Recent progress of their study — The Dharmasútras—Ápastamba — Baudháyana, Vasishṭha, Gautama, Vishṇu — Where composed — Constitution and activity of the Schools — Relation to the Vedas — Rise of the metrical Smṛitis — Their posteriority to the Dharmasútras — Various opinions regarding the age of Manu—Manu's reputation as a legislator — Different recensions of his Code — Archaic character of its laws — Commentaries — Bṛihaspati and Kátyáyana — Introduction to Nárada — Burmese law-books — The Máńavas — Sources of Manu — Yájnavalkya — Nárada.

Smṛiti and Smṛitis.

In the present Lecture I propose to examine the new materials which have recently come to light for a critical study of the principal law-codes of ancient India. These works, as you are aware, are usually called Smṛitis, and as a body are called by the collective name of Smṛiti or recollection, tradition. The Smṛiti has long been considered as the principal source of the sacred law (Dharma), and is viewed in that light by the Paṇḍits even now, though as regards Civil Law it has been entirely superseded since the last century by the teaching of the Commentaries and Digests. The Digest of Jagaṇṇātha, which was composed at the desire of Sir W. Jones in the second half of the last century, terminates the series of authoritative Digests recognized by the Courts. Down to the time of Jagaṇṇātha, however, any learned Paṇḍit might propose a new Vyavasṭhā or adjustment of contradictory passages in different codes of law, and set forth his opinions in a new composition, which in course of time might become a work of authority.

The other sources of law.

The Smṛiti, although the principal, was not the only, source of law in the eyes of the Indian Jurists. Whenever they were able to adduce a Vedic text in support of a proposition, they were sure to do so, and it was an established principle with them that a Smṛiti text even is overruled, in case it is opposed to a text from the Veda. The practice of eminently virtuous men (Çishṭas) was considered as a third, and local usage as a fourth source of the law. The Purāṇas were also frequently viewed in the same light. All these sources of the law are already mentioned in the earliest Smṛitis themselves, which shows that the composition of law-books must have begun at a very early period, long before the oldest specimens now extant of this class of works were written. Before treating the history of the Smṛitis in detail, it will be necessary to enter into a brief discussion of the relative importance of the divers materials on which both the Digests and the Smṛitis themselves profess to be founded.

Purāṇas.

The Purāṇas from the first were hardly recognized as equal in importance to the other sources of the law,[1] and they have never attained the same authority as the Smṛitis as regards Civil Law, but they are quoted a great deal on questions regarding religious ceremonies, pious donations and other religious subjects, including adoption. The bulk of the now existing Purāṇas is not allowed a considerable antiquity by contemporary Sanskrit scholars. The fact that the first and third books of the Yājnavalkya-smṛiti should have been incorporated in the Gāruda-Purāṇa, and the second book in the Agni-Purāṇa,[2] is characteristic of the general posteriority of the Purāṇas as they now stand to the Smṛitis. The Veda, in the theory of the Brahmanical Schools, is the fountain-head of the sacred law. It has existed from eternity, and is also called Brahman, because it is a direct emanation from Brahman, the universal soul. It will be seen presently, however, that the influence of the Vedas, practically speaking, on the growth of Indian Law has been very slight, because these religious works contain very little indeed about worldly matters.

Veda.

Customary Law.

Those traditional sources of the law which remain,

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[1] The Purāṇas are, however, mentioned by Gautama (XI. 19) as the last class of authoritative works, and are repeatedly referred to by A'pastamba. See Bühler, Introd. to A'past. xxvii *seq*.

[2] See Professor Stenzler's Preface to his Yājnavalkya ; V. N Mandlik, pp. lvii—lix.

viz., the practice of holy men and local custom, on the one hand, and the Smṛiti on the other hand, have no doubt been the principal agents in the growth of Sanskrit Law, but which was the more important of the two? Wherever written laws exist, they will speedily get the better of mere customs never reduced to writing. As regards India, the general ascendency of the written law as laid down in the Sanskrit treatises has never been doubted till very recently. Now-a-days, however, as hinted in the last Lecture, a belief seems to be springing up that the Sanskrit Law is really applicable, in Southern India particularly, to a small minority of the inhabitants only, the bulk of the people having always been guided by customary law alone. In order to treat this question fully, it would be necessary to examine first the relation of modern custom to written law, and then the part formerly played by customary law in India, and the way in which it is referred to in the early legal literature of India. Now, as regards the relation of customary to written law in modern India, it is a very difficult question, which does not enter into the province of the historical student of Hindu Law, and can only be decided by those who have had special opportunities of observing Indian life and manners in all parts of the Peninsula. I would only observe that what might have been possible in the early times of the British administration may prove impossssible now, after both the legislation and custom itself has been remodelled by a century of judicial decisions.[1]

Administration of Justice in the Native Courts.

But neither is there sufficient reason for questioning the wisdom of those who have established the principles on which the administration of law to the Hindus has been based ever since. It has been shown in the first Lecture that the Sanskrit Digests and Commentaries were composed by men of rank and influence, and that the legal rules contained in them must have corresponded to the laws actually enforced in the Native Courts of Justice. It is quite true that before the establishment of British rule in India customary law used to be given more weight in deciding law-suits than the Mitāksharā, Dāyabhāga or any other Digest. Most quarrels did not come within the cognisance of the Courts at all, but were decided by private arbitration. This has been pointed out by competent English observers of Indian life, and the same result may be gathered from an impartial study of the Indian law-books, ancient and modern.[1] Orientals do not like public tribunals to meddle with their private affairs, and there were excellent reasons for this natural aversion in India, as the Native Courts, and not unfrequently the Rājāhs themselves, were excessively corruptible. As therefore the public Courts had far less legal business to transact than the Panchāyats and other private tribunals established *ad hoc*, it was but natural that customary law should have played a more prominent part in those times than written law. This was changed under British rule so far that custom in order to acquire the force of law must be proved to be continuous and ancient. But within these limits the validity of custom has been recognized to the fullest extent in the Courts.[2] They would not, and could not, assign an inferior position to written law on principle. By doing so everything would have been made indistinct, and the confusion, which appears to have existed before the establishment of British Courts in India, would have become worse confounded.

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[1] See the lucid discussion of this whole question in Mr. Mayne's Hindu Law and Usage.

The Smriti-chandriká on local usage.

But, it has been argued, do not the authors of the Sanskrit Law-books themselves refer to custom as something distinct from and superior to their own rules? To this assertion it may be replied that both the modern works and the Smṛitis allude to custom very often, but without acknowledging its validity in any case where it is opposed to written law. Thus, to begin with the modern works, the Smṛitichandrikā contains a whole chapter on local usage (Deçadharma). This chapter has been made very much of, and has been taken to prove the correctness of the opinion advanced by Ellis that the law of the Smṛitis has never been the law of the Tamil and cognate nations.[3] It is, however, expressly observed in that very chapter of the Smṛitichandrikā that those usages only shall be judicially recognized and established which are not opposed to the teaching of the Vedas

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[1] See *e. g.* the texts collected in Colebrooke's Essay on Hindu Courts of Justice.

[2] Mayne, §§ 40—56.

[3] See Nelson, A View of the Hindu Law, pp. 115—117, where an English version of the greater portion of this chapter from the pen of Dr. Burnell may be found.

LECTURE II.

and other authoritative books,[1] all other practices having to be stopped by the sovereign power. In another chapter of the untranslated part of the Smṛitichandrikā which precedes the chapter on Deçadharma almost immediately the following climax is established. When the Veda (Çruti) and the sacred tradition (Smṛiti) are mutually opposed to one another, the Veda shall prevail. Custom (*Achara*), and the verdict passed by an assembly of learned Brahmans (*Pārishadvachanam*) may be overruled both by the Veda and by the Smṛiti. Among several conflicting Smṛiti texts, a text of Manu shall prevail, etc. This shows as distinctly as possible that the Smṛiti is placed above custom in the Smṛitichandrikā, and the same remark applies to the other Sanskrit treatises. Nor would there be any necessity for setting up customary against written law, as the peculiar method of interpretation followed by the Indian Jurists would enable them to dispose of all such rules as were opposed to the established usage of their own epoch and native country. They might say that such laws, though adapted for the golden age of the early sages, were no longer fit to be practised in the present (Kali) age of sin, or that, although consonant with religion, they were abhorred by the people, or that they were meant as mere explanatory statements (*Arthavāda*) and not as laws, or that a certain practice, though morally wrong, was legally valid, etc. Elsewhere than in India, too, it has been found easier to explain an old law away than to abolish it, and tricks of interpretation analogous to those invented by the Indian Paṇḍits have been resorted to by the jurists of several European countries.

References to custom in the Smṛitis.

In the old texts themselves, the superiority of the Smṛiti to custom naturally enough is not accented so strongly as in the modern works. The Smṛiti writers, especially the earlier ones,[2] did not consider themselves as inspired authors, though they were regarded in this light by the commentators. They acknowledge the Smṛiti generally as a principal source of the Sacred Law, and they mutually quote one another. But the teaching of one man was not considered as absolutely binding on all the rest like the precepts of the Veda, and these writers may be frequently seen engaged in controverting the opinions held by their predecessors.[1] Custom, on the other hand, is frequently referred to in these works under various denominations. Thus, the usages prevalent in the Holy Land Aryāvarta and the utterances of an assembly of virtuous men, especially of learned Brahmans (*Pārishad*) are designed as authoritative in every case.[2] It was especially on questions of penance and expiations that these holy men appear to have been consulted,[3] much like the Dharmadhikaris of a subsequent period, who have retained down to the present day the privilege of dictating the penance to be performed by an offender, who has been pronounced guilty of a transgression by his caste. Local and caste usages are also emphatically recognized. Thus it is ordained that a King, after having conquered a foreign country, shall maintain the laws anciently current in it, and shall not replace them by new laws.[4] Gautama (XI. 21—23) says that cultivators, traders, herdsmen, money-lenders and artisans shall have authority to lay down rules for their respective castes in accordance with the peculiar customs of those castes which have to be ascertained through the testimony of eminent members. Similar rules occur in other Smṛitis. But it is nowhere asserted that, in case of a conflict between custom and the Smṛiti, the Smṛiti may be overruled. On the contrary, those customs only shall be given the force of law which are not opposed to the Çruti (Veda) and Smṛiti; and the practice of eminently virtuous men (*Çishṭas*) even has authority in those cases only which are not expressly provided for in the Veda or Smṛiti.[5] The more recent Smṛitis in which the constitution of a judicial assembly is treated in some detail refer occasionally to custom as a ground of decision, but they direct that, in general, the King or his Judge shall

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[1] श्रुत्यादिप्रमाणाविरुद्धम्

[2] See Bühler, Sacred Books, II, Introduct.

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[1] See Bühler, Sacred Books, II, pp. xviii—xix. Yājnavalkya, I, p. 56; Manu, III, 16; Gautama, I, 19, 39; II, 9, etc.

[2] Gautama, I, 1; XXVIII, 48—51; Ápastamba, I, 1, 1, 1—2; II, 11, 29, 13—14; Vasishṭha, I, 4—17; Baudhāyana, I, 1, 1 and 2; Manu, II, 6—24; XII, 108—113; Vishṇu, LXXXIV, 4, etc. The definitions of the situation and extent of Áryāvarta, "the country of the Aryans," vary considerably. It is generally referred to Northern India, and there can be no doubt that the earliest law-books, now lost, were composed in the country north of the Narmadā.

[3] Baudhāyana, I, 1, 1, 15.

[4] Manu, VII, 203; Vishṇu, III, 42; Yājnavalkya, I, 342.

[5] Gautama, XI, 20; Vasishṭha, I, 5, 17; Ápastamba, II, 6, 15, 1. Manu, VIII, 41, does not say that a custom, in order to be legalised, must harmonise with the sacred books; but this clause is supplied by all commentators in accordance with the other Smṛitis.

Importance of the Smṛitis.

take the written law of the Smṛiti (Smṛiti Çāstra, Dharmaçāstra, Smṛiti) for his guide in deciding any law-suit.[1] These considerations tend to show the range of authority which had been early acquired by the Smṛitis. Custom was not replaced by them, but it occupied a subordinate position in the eyes of the Brahmans, except so far as it had been, and was constantly being, embodied in the authoritative works of the Smṛiti writers. For the historical student of Indian Law the Smṛitis are even more important than for the compilers of the Brahmanical Digests. Without the Smṛitis a historical study of Indian Law would be simply impossible, as they are the only authentic relics of the ancient law of India.

Recent progress of their study.

Thus the recent progress in the study of the Smṛitis may be said to acquire a peculiar significance. Till a few years ago, the Code of Manu was the only Smṛiti accessible in an English form. It represented the principal, and in many cases the only, basis on which the students of Indian Law and Indian History rested their theories regarding the constitution of public and social life in ancient India. In the present day, however, a considerable number of other Smṛitis, besides the Manusmṛiti, has become accessible in an English form, and all the earliest sources of Indian Law, as far as they have been preserved complete in MS., have been translated, and their origin and history has been discussed in the Sacred Books of the East, edited by Professor Max Müller.[2] Critical editions of the Sanskrit originals of the same works, called Dharmasūtras, and of copious extracts from the old Commentaries on them, have also appeared, or are in course of preparation.[3]

The Dharmasútras.

The date of none of the Dharmasūtras can be fixed by direct historical evidence, but their remote antiquity is sufficiently proved by the fact that they belong distinctly to the Vedic period of Sanskrit literature. The term Dharmasūtras may be translated by "Aphorisms on the Sacred Law," and their peculiar aphoristic or rather mnemotechnic character connects them closely with other Vedic Sūtras. Like all works of this class, they are written in prose or in mixed prose and verse. In the case of the Apastamba, Baudhāyana and Hiraṇyakeçi Sūtras, there is moreover direct evidence of their connection with Vedic works, as each of these Dharmasūtras forms an integral part of a large authentic collection of Vedic Sūtras on divers subjects ascribed to one and the same author. The three other works are not entitled Dharmasūtras, but Dharmaçāstras or Smṛitis in the MSS., but their thorough agreement with the genuine Dharmasūtras in point of style and contents proves them to belong to the same class of literary compositions.

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[1] Nārada I. 1, 8, 16, 31. Bṛihaspati in one text speaks of the issue of a law-suit as depending on the customs of the country, reasoning and the counsel of the lay public, but in another text he says it depends on a Smṛiti text (Smṛiti Cāstra) recited by the Judges.

[2] II. and XIV. Voll. The sacred laws of the Áryas as taught in the Schools of Ápastamba, Gautama, Vasishṭha and Baudhāyana, translated by G. Bühler (Oxford, 1879, 1883). Vol. VII. The Institutes of Vishṇu, translated by J. Jolly (Oxf., 1880).

[3] Ápastamba's Dharmasūtra, 2 parts, edited by G. Bühler (Bombay 1868, 1871). The Institutes of Gautama, edited by A. Stenzler (Lond. 1876). The Vishṇu-smṛiti, 2 fasc., edited by J. Jolly (Calcutta, 1881). Critical editions of the Vasishṭha and Baudhāyana Dharmasūtras are being prepared by the Rev. A. Führer of Bombay, and E. Hultzsch of Vienna.

Ápastamba.

In point of language, no other Dharmasūtra abounds so much in archaic forms as the Dharmasūtra of Apastamba, which proves that it must have been composed before the canon of Classical Sanskrit Speech, fixed by the renowned grammarian Pāṇini, had gained general ascendency in India. This circumstance, combined with other internal and circumstantial evidence, renders it very probable that the author of this Dharmasūtra has not lived later than the 5th century B. C. Nor is his work likely to have been tampered with by interpolators, as it could not have retained in that case its archaic language, its unity of plan, and a certain fresh individuality and naturalness of style in which the lively discussions kept up in the ancient Brahmanical Schools of India are clearly reflected.

Baudhāyana, Gautama, Vasishṭha, Vishṇu.

All the other Dharmasūtras, except Hiraṇyakeçin's, which is hardly more than an improved edition of the work attributed to Apastamba, are more or less disfigured by subsequent additions and alterations. On the whole, however, there are sufficient criteria for distinguishing these accretions from the original stock, and the researches of Professor Bühler have established the fact that Baudhāyana's Dharmasūtra must be older than the Sūtra of Apastamba, and that Gautama's Dharmasūtra must again be older than Baudhāyana's. It must not be thought, however, that Gautama was absolutely the first teacher of the

Sacred Law. He does not seldom refer to the opinions of other teachers, and mentions the Smṛiti generally as a principal source of the law. The relative position of the Vasishṭha with regard to the other Dharmasūtras cannot be ascertained positively, because the genuineness of the latter portion of that work is liable to suspicion. It may, however, be observed that there is no reason for impeaching the genuineness and antiquity of the chapters on Inheritance either in the Vasishṭha-smṛiti or in any of the other Dharmasūtras hitherto mentioned. The Vishṇu-smṛiti or Vishṇu-sūtra in its present shape must be referred to a far more recent period than any of the other works, as it has been remodelled, apparently, by a member of the Vishṇuitic sect of Bhāgavatas, who has converted the whole work into a speech delivered by the God Vishṇu to the goddess of the earth, and has also introduced a number of minor additions and changes dispersed through the body of the Kāṭhaka Dharmasūtra, as this work appears to have been originally called. But the principal portions of this copious work are undoubtedly old, and it is specially important for the legal history of India on account of its detailed provisions about civil law and judicial procedure.[1]

Where composed.

As regards the place of the composition of the Dharmasūtras, it appears that they are South Indian works, with the exception of the Sūtras ascribed to Vasishṭha and Vishṇu, which were most probably written in the country north of the Narmadā. The real names of their authors cannot now be ascertained, as their individuality was merged in the schools to which they belonged. About the history and constitution of these schools however we happen to possess reliable information. Thus it is an established fact that Baudhāyana, Apastamba and Hiraṇyakeçin were the founders of three successive schools studying the Taittirīya branch of the Yajurveda. The Vishṇu-smṛiti has originated probably among the Kāṭhas, one of the earliest Vedic Schools, whose members had chosen the Kāthaka branch of the Yajurveda for the subject of their special study. The Gautamas were a school studying the Sāmaveda. The Dharmasūtra ascribed to Vasishṭha seems to have originated in a school studying the Rigveda.

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[1] Rajkumar Sarvadhikari thinks it a mistake to class the Vishṇu-smṛiti as a Sūtra work and to refer its composition to an early epoch. However, in glancing at his observations (Lectures, 197-200), I cannot help arriving at the conclusion that he is referring to a different work altogether than the well-known Smṛiti commented on by Nandapaṇḍita. He speaks of the great number of subdivisions of castes in the Vishṇu-smṛiti as proving its recent date. The fact is, that Vishṇu's statements (chap. xvi) regarding the system of mixed castes are hardly equalled in simplicity by the analogous rules of any other legislator. This very point has been marked out by Professor Weber in his Review of the author's edition of the Vishṇu-smṛiti as indicating the early composition of this work.

Constitution and activity of the Schools.

Of the method of instruction followed in these schools nothing can give a better idea than the copious rules of the Apastamba and other Dharmasūtras themselves, by which the conduct to be observed by a pupil towards his teacher and *vice versâ* is regulated down to the minutest detail. Every member of the higher castes, and in particular every Brahman, was expected to stay for a number of years with a teacher of the Sacred Science, and the strict discipline imposed on him during the period of his studentship and its long duration corresponds to the really appalling amount of knowledge he was required to master as a student. The whole system of every teacher was based on that particular branch of the Veda to which he adhered, and embraced elaborate rules on the performance of sacrifices and domestic ceremonies, including investiture, marriage and the other sacraments (*Samskāras*), an exposition of the right way to recite and interpret the Veda (Çikshā and Mīmāmsā or Nyāya), the doctrines of the Sacred Law of the Vedas (Dharma), and several other subjects. The eminently religious character of this kind of instruction accounts sufficiently for the strange mixture of secular and religious matters which Indian Law exhibits. Civil Law (Vyavahāra) was considered merely as a subordinate part of the rules of conduct laid down in the Sacred Law for each of the four castes (Varṇa) and each of the four orders (Açrama), and consisted of a restricted number of mixed rules on Civil and Criminal Law and Judicial Procedure, among which the Law of Inheritance occupies a conspicuous place.

Relation to the Vedas.

In spite of this undue prevalence of the religious and scholastic elements which has stinted the growth of Indian Law from the very outset, there is no reason to doubt that the legal rules of the Dharmasūtras are based on a large superstructure of customary law. The sources from which the Dharmasūtras and the Indian law-books generally profess to have been derived have been stated before. In the Dharmasūtras, the quotations and extracts from the Vedas occupy a conspicuous place, as is natural in compo-

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sitions belonging to the Vedic period of Sanskrit Literature. But very few out of these texts from the Veda have a bearing on Civil Law; and those texts which are actually quoted in support of some legal rule have generally been given their legal significance by means of an artificial method of interpretation. Thus Vasishṭha endeavours to rest the claim of the Putrikāputra, a certain species of adopted son, to succeed to his grandfather on a text from the Rigveda, which occurs in a hymn addressed to the goddess of the Dawn, and has nothing whatever to do with Adoption. Apastamba, when arguing about the injustice of an unequal division of the patrimony, quotes a Veda text containing the simple statement that Manu distributed his wealth among his sons, as proving that unequal partition is not recognized in the Veda. Baudhāyana rests the proposition that women are incapable of inheriting on a Vedic text which excludes them from participation in the drinking of Soma juice at the solemn Soma sacrifices. These instances show that the texts of the Veda, far from exercising a pressure on the Smṛiti writers and preventing them from recording freely the usages of their own period, were, by a little dexterous wrangling, made by them to fit in with, and capable of being adduced in corroboration of, their own theories. Where this was impossible, the Smṛiti writers may be seen to avail themselves of that convenient theory, so elaborately developed in after times by the commentators, that a certain practice, though legitimate in the times of the ancient sages, must not be followed in the present day. The agreement of the rules of the Dharmasūtras with the usages prevalent in the time of their composition is further confirmed by the difference of doctrine observable between the now extant works of this class. There exists indeed a large stock of ancient tradition common to them all, and a considerable number of *versus memoriales* in particular, which may be compared to the legal proverbs of other countries, recur with slight variations in most of them. On a number of vital points, however, such as *e. g.* the Order of Succession, the Law of Strīdhana, the Practice of Niyoga and the Rights of Subsidiary Sons, they are at issue. It is hardly possible to trace this diversity of doctrine to another cause than the difference of popular usage subsisting between the divers times and countries in which the existing Dharmasūtras had originated.

Rise of the metrical Smṛitis.

Each of the numerous Brahmanical Schools of the Vedic epoch had its own compendium of the Sacred Law, and every teacher of eminence, even if he did not become the head of an independent new school, may be supposed to have made additions to the doctrines handed down to him by his predecessors. Now, this process going on for a number of centuries would have swelled the extent of these compendiums to such an extent as to render it impossible for one person to master or to teach them. Thus the progress of science would favour the rise of special schools for each department of science, just as in Europe the *universitas literarum* of old has divided into several faculties, which in their turn have gradually come to include a number of special schools for divers branches of science. In India we actually find conflicting schools of grammarians (Vaiyākaraṇas), lexicographers (Nairuktas) and other specialists referred to in such early works as the Nirukta and Mahābhāshya, which were composed several centuries B.C. The cultivation of the divers branches of science was favoured by kings and rich noblemen. The Greek authors, who became acquainted with India in the 3rd century B.C., have recorded the existence in that country of public academies or high schools, in which each pupil was instructed by several teachers in turns. It is natural to suppose that law, on account of its importance for the administration of justice, must have formed a favourite subject of study in the high schools of Sanskrit Literature.

Their posteriority to the Dharmasūtras.

Now, on examining the kind of law that is being taught and studied in modern India by the specialists in the department of law, the Dharmaçāstrīs, it will be seen that metrical Smṛitis, works written in continuous Çlokas, together with their Commentaries, stand in the foreground. Thus the metrical Smṛiti of Manu, with its numerous Commentaries, is, and has been, studied all over India, whereas, *e.g.*, the Dharmasūtra of Apastamba, as a whole, is not read anywhere except in those parts of Southern India where Brahmans belonging to the Vedic School of Apastamba (Apastambīyas) are found. Nor has any Vedic Sūtra School ever spread over the whole of India, and the universal authority attained by the metrical Smṛitis would therefore be sufficient proof in itself of their recent origin as compared to the Dharmasūtras. It was only through being quoted in the authoritative Digests and Commentaries

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that the Dharmasūtras attained more than local notoriety; and in these works also the quotations from the metrical Smṛitis occupy a far more prominent place than the quotations from the Dharmasūtras. There was, then, a point reached in the development of Indian Law when the Dharmasūtras were superseded by metrical works. And it appears probable from what has been said, that this change was owing to the setting up of Law and Jurisprudence as an independent branch of science, called Dharmaçāstra. The new law-books retained their connection with Vedic works to a certain extent. They exhibit a number of those archaisms and peculiarities of style, which are otherwise confined to Sūtra works. They were included in Smṛiti literature, and the details regarding many of the ceremonies described in them had to be supplied from the study of the Gṛihyasūtras.[1] Otherwise, however, the authors of these metrical treatises aimed at giving a full exposition of Indian Law, and their productions are far superior both in point of bulk and fulness and of systematic treatment of the law to the meagre treatises of the Sūtra period. The rules regarding Civil Law in particular are no longer propounded all in a heap as in the Dharmasūtras, but they are arranged under eighteen titles. The principal point, however, is this, that these Smṛitis are written in continuous epic Çlokas, whereas the Dharmasūtras are only interspersed here and there with verses composed in the same or a different metre. Whether this wholesale introduction of the epic Çloka into the early Law Literature of India may have been due to the growing popularity of the great national epics of India,[2] or to some other cause, hitherto it has not been shown that in any department of Indian scientific literature, the metrical works are, as a class, older than the prose treatises on the same subject.[3] It should also be borne in mind that the difference between prose and verse is far greater in India than it is with us, every Indian metre being sung on a special tune of its own.

Various opinions regarding

The prose treatises being older than the metrical Smṛitis, and the contents of both classes of works agreeing to a considerable extent, the Dharmasūtras generally may be viewed as the sources of the metrical Smṛitis. Nevertheless, the determination of the epoch of each single Smṛiti remains a question of evidence. The spurious compositions in the Sūtra style, which have been tacked on to several Dharma and Gṛihya-sūtras in modern times, prove that the composition of Sūtras did not stop entirely when the composition of metrical Smṛitis began. On the other hand, the versification of some of the old Dharmasūtras may have taken place very early. This is quite probable as regards the old Dharmasūtra, which appears to underlie the composition of the celebrated Code of Manu. The opinions entertained of the antiquity of this reputed law-book have passed through two opposite stages. Sir W. Jones, the first translator of the Code of Manu, referred its composition to the 13th century B. C. But when fifty years after Sir W. Jones, the systematic study of the Vedas was taken up by the Sanskritists of Europe, the founders of that study discovered that the Code of Manu had no place in the Vedic epoch of Sanskrit Literature. Others have gone beyond this, and what must be styled an undue depreciation of the antiquity and historical importance of the Code of Manu has become rather common in these days. It will be my endeavour to show that whatever new evidence has been recently discovered points in the opposite direction, though Jones's exaggerated opinion of the antiquity of the work cannot be upheld.

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[1] This becomes apparent, e.g., from numerous references to the Gṛihyasūtras in Kullūka's Commentary of the Code of Manu.

[2] See Dr. P. von Bradke's paper on the Mānava Gṛihyasūtra, Journal of the German. O. S., 1882.

[3] West & Bühler, pp. 52, 53.

the age of Manu.

The widespread and antiquity of Manu's reputation as a legislator has been, and is being, confirmed by every fresh advance made in the field of Sanskrit studies. Thus it can now be shown that Manu, the father of mankind, is referred to as an authority on the Sacred Law (Dharma) in a considerable number of Vedic works, from the Kāṭhaka (XI. 5) and Taittirīya recensions of the Black Yajurveda, which state that whatever Manu has said is Medicine, and the Nirukta (III. 4), which quotes a maxim on Inheritance of Manu Svāyambhūva (the author of the law-code has the same epithet) down to the Gṛihyasūtra of Çānkhāyana (II. 16), and the Dharmasūtras of Gautama (XXI. 7), Baudhāyana and Vasishṭha (I. 17; III. 2; IV. 5-8, etc.)[1] of post-Vedic works, quoting Manu on questions of law,

Manu's reputation as a legislator.

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[1] Ápastamba (II. 7, 16, 1) does not refer to Manu as a legislator, but he mentions him as the inventor of Çrāddhá offerings.

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I may mention, *e.g.*, the Mahābhārata, the Nārada-smṛiti (I. 4, 34, 55; 5, 107), Bṛihaspati-smṛiti and other metrical Smṛitis, Varāhamihira's Bṛihatsamhitā (6th century), the Drama Mṛicchakaṭikā (6th century),[1] Açvaghosha's Buddhistic Pamphlet, entitled Vajrasūcī.[2] Hemachandra's system of the Jain Doctrines[3] (11th century), and last not least, the Indian inscriptions.[4] Whenever the ancient law-givers are referred to by name or mentioned collectively not only in the Digests and Commentaries, but in the Inscriptions, Purāṇas and metrical Smṛitis as well, Manu invariably figures at their head. The heretical Buddhists of Burma even, though demurring to the authority of the Brahmanical Law, have adopted the tradition which makes Manu the first of legislators, and all the law-books of Burma profess to be Codes of Manu.[5] The same tradition has been discovered in the Island of Bali,[6] into which it must have been imported from Java.

Different recensions of his Code.

It may be and has been urged that such facts as these do not afford much help in fixing the age of the existing Code of Manu, as many of the texts ascribed to him cannot be found in that work. These texts may have been taken from an older recension of the Code of Manu. The existence of several different recensions of that work is expressly confirmed by the Introduction to the Nārada-smṛiti, which speaks of three or four, and by the Skānda-purāṇa, which speaks of four versions of the Code of Manu,[7] as also by the quotations from a work called Vṛiddha or Bṛihan-manu, in the mediæval Commentaries and Digests, and by the fact that the existing Manu-smṛiti is introduced as a recension composed by Bhṛigu. There is, however, a great deal of other evidence, which cannot be met by this objection, and makes directly in favour of the whole, or at least of a considerable portion, of the now current version of the Code of Manu.

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[1] P. 154, ed. Stenzler.

[2] See Professor Weber's translation, Indische Streifen, I. 186—209.

[3] See Hemachandra's Yogaçāstra, edited by Windisch, II. 13, 33—37, 41—46, Journ. Germ. O. S., xxviii.

[4] Bühler, Sacred Books of the East, XIV, p. xx.

[5] See Sangermano's Burmese Empire, pp. 172, *seq* (London, 1833); Rost, Manusāra in the Indische Studien, Vol. I.; Richardson's Damathat (2, ed. Rangoon, 1874), and Moung Kyah Doon's Short Essay on the Sources and Origin of Buddhist Law. Four volumes of Burmese law-books have been edited in 1874-76 by Moung Fetito. A critical edition of the earliest law-book of Burma, the Manusāra, is at present being prepared by the Rev. Dr. Führer, of Bombay.

[6] Friederich in the Journ. of the Ind. Archipelago, IX. 243 (1849); Weber, Ind. Literature, 298 note (Germ. edition).

[7] Mandlik, p. xlvii. The same tradition is quoted by Hemādri (Dāna-khaṇḍa, p. 578) from an anonymous writer.

Archaic character of its laws.

1. Many of Manu's legal rules have a very archaic appearance. This will come out very clearly, as far as the Law of Inheritance is concerned, in the course of these Lectures. The same observation may be made in regard to other parts of the Civil Law, the Law of Evidence especially, and the purely religious commandments of Manu also belong to a very old order of ideas in many instances. It may be argued, indeed, that laws and customs might have changed very slowly in that part of India where the Code of Manu was composed, and more quickly in other parts of India. It may be said, further, that Indian law-books contain a good deal that is conventional, and that a notoriously ancient writer like Ápastamba professes more radical views on many subjects than a number of very modern writers. Still the conclusive character of a great deal of collective evidence of this kind put together cannot be denied.

Commentaries.

2. The great number of old Commentaries on the Code of Manu from all parts of India, from Kashmir to Cape Comorin, and from Bengal to Bombay, proves the early diffusion of copies of the present version of that work over the whole Continent of India. All these Commentaries, which have been noticed in some detail in the first Lecture, from Medhātithi's Commentary in the 8th or 9th, down to Rāghavānanda's in the 16th or 17th century, exhibit very little variation of reading indeed, which shows clearly how carefully the text in its present version was handed down from generation to generation.[1]

Brihaspati and Kátyáyana.

3. A text attributed to Bṛihaspati states that any Smṛiti opposed to the ruling of Manu has no validity. The Indian commentators refer this statement to the present Manu-smṛiti, nor can they be far wrong in doing so. The metrical Smṛiti of Bṛihaspati, as will be shown afterwards, presupposes the existence of a work very much like the

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[1] In some copies of Medhātithi's Commentary, a large portion of the 8th and 9th books is arranged otherwise than in the current version, and another portion, including the Çlokas treating of the 18 titles of law, is omitted. See Nelson, Scientific Study, p. 37, note, *ante*, p. 7. But the oldest copy which I have seen, an India Office MS. of the 16th century, contains these important Çlokas.

present version of the Code of Manu. Brihaspati's date cannot be placed later than about the 6th century A. D. The metrical Smṛiti of Kātyāyana also, a production of the same epoch, could not have been composed, if a Code precisely similar to the Manu-smṛiti had not then existed.

Introduction to Nárada.

4. The same assertion holds good in the case of the Introduction to the Nārada-smṛiti, which may be referred to the 6th or 7th century A. D.[1] The author of this Introduction refers to an abstract made by Sumati, son of Bhṛigu, of the original Code of Manu, in a way which shows clearly that he means the now existing version of the Code of Manu. He states it to be the version current in his own time.

Burmese law-books.

5. The Burmese law-books do not only profess to be based on the Code of Manu, but they have actually a great number of rules in common with that work. Thus the rules laid down in the Manusāra, a Pāli work, on the subjects of boundary disputes and of incompetent witnesses, agree very closely with the corresponding sections of the Code of Manu, and the Damathat, which is written in the Burmese language, has the eighteen titles of law, the twelve kinds of sons, the three sorts of sureties, the privileges granted to the senior sons at the distribution of the patrimony, and other characteristic rules in common with the Code of Manu.[2] The Burmese law-books cannot be modern works, as all the successive dynasties of Burma, and of Arracan, Pegu, &c., are said to have governed their people in accordance with the Laws of Manu, and to have promulgated Codes founded on them. The Siamese Laws are, in their turn, derived from the Damathat of Burmah. The Rev. Dr. Führer refers the composition of the earliest law-books of Burmah to the 3rd century A.D.

The Mánavas.

5. Several of those references to the utterances of Manu, which are found in Vedic works, may be actually

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[1] The Introduction to the Nārada-smṛiti can hardly be as old as the body of the work (see the Preface to my English version, p. v). Still it must be allowed a considerable antiquity, as Medhātithi quotes it as the genuine production of Nārada. He says (Gloss on Manu, I. 58). "Nārada states as follows: That book consisting of a hundred thousand (çlokas) was composed by Prajāpati. It has been successively shortened by Manu and his successors." This, though no *verbatim* quotation of the Introduction to Nārada, shows that Medhātithi was perfectly acquainted with its contents. As to the original version of the Introduction to Nārada, see Lecture III.

[2] See Rost, On the Manusāra, in the 1st vol. of the Indische Studien; Damathat, pp. 69, 96, 275, 314.

traced to the Code of Manu. Thus no other writer than Manu is quoted as an authority in the Gautama-smṛiti (XXI. 7), the earliest work of the Dharmasūtra period, and the rule here attributed to Manu may be found in his Code (XI. 90—92; 104—105). A particularly large number of quotations from a Smṛiti attributed to Manu (Mānavam) and actually traceable to the existing Code of Manu, occurs in Vasishṭha's Dharmasūtra; and this work has moreover 39 verses in common with the Code of Manu, which are not marked as quotations.[1] Among the quotations, one is in mixed prose and verse. This is a very important circumstance, as it proves that a Mānava Dharmasūtra has actually existed. It has been possible even to make a guess as to the particular Vedic School in which this Dharmasūtra may be supposed to have originated. Indian tradition records the existence of a Vedic School studying the Black Yajurveda, which was called the Mānavas or Maitrāyaṇīya Mānavas. It was natural to suppose, therefore, that the Code of Manu, Mānava Dharmaçāstra in Sanskrit, owes its name to, and has been prepared from, the Dharmasūtra of the Mānavas. The credit of this hypothesis, which has long been the received one, has been somewhat shaken owing to the recent recovery of the principal works of the Maitrāyaṇīya Mānava School. None of these works shows the slightest resemblance, in point of style or contents, with the Code of Manu.[2] The examination of the works produced in the Mānava Maitrāyaṇīya School has, however, disclosed another important fact, *viz.*, their close connection with the compositions of the Kaṭhas, another ancient school studying the Black Yajurveda. As the Vishṇu-smṛiti appears to be a recast of the ancient Dharmasūtra of the Kaṭha School, and as the Code of Manu has a great deal in common with the Vishṇu-smṛiti, the existence of a connection, whether direct or mediate, of the Code of Manu with the Vedic Schools studying the Black Yajurveda is far from improbable.[3]

Sources of Manu.

6. The close connection between the Code of Manu and the Dharmasūtras generally becomes apparent at a mere glance at the references to the parallel passages from the

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[1] See Bühler, Sacred Books, XIV, pp. xviii, xx; West & Bühler, 45.

[2] See the author's paper on the Kāthaka and Vishṇu Sūtras, in the Transact. of the R. Bav. Acad. of Science, 1879, and P. von Bradke, l.c.

[3] See Sacred Books, Introd. to vol. vii.

Code of Manu, which may be found in the recently published translations of the Dharmasūtras. The Vishṇu-sūtra, *e.g.*, seems to have furnished in many cases the very Sūtras which the compiler of the Code of Manu has versified, though in other cases, *e. g.*, in regard to the exclusion of women from inheritance, the rules of Manu are more archaic than the corresponding Laws of Vishṇu. Practically speaking, as much of Manu's Laws as may be traced to the existing writings of the Sūtra period, and a great deal more which appears to have been derived from Sūtras now lost, is very old. The remainder has been added by the author of the metrical version and by subsequent writers, to whose activity the numerous conflicting statements to be found in the Code of Manu must be considered due. It is, however, curious to note that some of those passages even which have been viewed as exhibiting absolutely certain marks of recent composition, can now be proved to possess considerable antiquity. Thus the prohibition of the Niyoga, which follows immediately on a number of detailed rules regarding its performance, has obviously been tacked on to the latter at a time when the practice of Niyoga had fallen into disuse. Nevertheless, it must have formed part of the Code of Manu already in the 6th century A.D., or earlier, as it is referred to in the metrical Smṛiti of Bṛihaspati.

Yájnavalkya.

The Smṛiti of Yājnavalkya,[1] though less celebrated than the Code of Manu, has exercised an immense influence on the modern development of Indian Law, through the medium of the Mitāksharā and other Commentaries of the Yājnavalkya-smṛiti. It was however not a fortuitous circumstance that such eminent men as Vijnāneçvara and Aparārka selected this particular Smṛiti as the basis of their systematic works on Indian Law. It appears, on the contrary, that the preference shown by those writers to the Yājnavalkya-smṛiti over the reputed, but somewhat obsolete composition of Manu, was due to its agreement with the actual usage of their own time. The fact that the laws promulgated by Yājnavalkya have, on the whole, a less archaic appearance than the analogous rules of Manu may be easily established by looking up the marginal references in Professor Stenzler's edition of Yājnavalkya.[1] Nevertheless, the connection of the Yājnavalkya-smṛiti with the White Yajurveda appears very clearly, and the extreme laconism and pregnancy of its style may be viewed as a remnant of the Sūtra period.[2] A very considerable portion of the subject-matter contained in this work is traceable to the Sūtra works of the Black Yajurveda, especially to the Vishṇu-smṛiti and to the Mānava Gṛihya-sūtra,[3] but it is impossible to ascertain whether they have been derived from this source mediately or immediately. The original Sūtras certainly have not only been versified, but considerably altered by the compiler of the Yājnavalkya-smṛiti. Thus Vishṇu (V. 9, 122, 123), speaks of the punishment ordained for forgery. An analogous rule may be found in the Yājnavalkya-smṛiti (II. 240, 241), but the author of the latter work extends this rule to a case not provided for by his predecessor, *viz.*, the forgery of coined money, Nāṇaka. The term Nāṇaka has a decidedly modern appearance, nor is coined money ever referred to in the ancient Smṛitis. Other supposed marks of recent composition of the work under notice, such as the astronomical and astrological views of its author, the references to a heretical sect, which has been identified with the Buddhists, the frequent allusions to writing and written evidence, &c., have little or no weight by themselves; but viewing them collectively, their importance in fixing the date of the Yājnavalkya-smṛiti cannot be denied. The highly systematic arrangement of the law, both religious and secular, in the Yājnavalkya-smṛiti, affords evidence in the same direction. Altogether the composition of the metrical Smṛiti of Yājnavalkya cannot be referred to an earlier date than the first centuries A. D.

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[1] An English translation of this work, together with the original text, has been recently published in V. N. Mandlik's Hindu Law.

Nárada.

The Nārada-smṛiti is the only work of its kind, in which Civil Law is treated by itself without any admixture of rules relating to rites of worship, penances and other religious matters. At the same time, Civil Law and Legal

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[1] See, too, Professor Stenzler's Preface to his Yājnavalkya, and his paper on Indian Ordeals (9 vol. of the Journ. Germ. Orient. Soc.) ; E. W. Hopkins's book, "The mutual relations of the four castes according to the Mānava Dharmaçāstra." 1881 ; *post*, Lectures IV—XII.

[2] West and Bühler, 44.

[3] See Sacred Books, VII. Introduction, and Dr. von Bradke's paper above referred to.

Procedure is seen in a far more advanced state of progress in the Nārada-smṛiti than in any of the Smṛitis previously noticed. These circumstances, while rendering the Nārada-smṛiti peculiarly attractive and interesting to the student of Indian law, show that it could hardly be a modernized Dharmasūtra, and stamp it as the production of a comparatively recent age. Other internal and circumstantial evidence helping to determine the date of this Smṛiti has been collected in the Introduction to my English version of the Institutes of Nārada, the result being that the composition of this work has to be placed in the 5th or 6th century A. D. The recently discovered fragment of another version of the Nārada-smṛiti, different from the current one, will be discussed in the next Lecture, together with other Smṛiti fragments and with the minor Smṛitis.

LECTURE III.

NEW MATERIALS FOR A HISTORICAL STUDY OF HINDU LAW.

3.—THE MINOR SMṚITIS AND THE SMṚITI FRAGMENTS.

Number of the Smṛitis — Minor Smṛitis — Works in the Sútra style — Metrical Smṛitis — Háríta — Sectarian works — Lost works on Civil Law — The recently discovered fragment of Nárada — Date of the Nárada-smṛiti — Introduction to Nárada — The quotations — The lost Smṛitis — Fragments of Dharmasútras — Háríṭa, — Cankhalikhita. — Cankha, — Uçanas and Paiṭhínasi — Bṛihaspati and Kátyáyana — Bṛihaspati — Kátyáyana — Comparison of these two authors with Yájnavalkya and Nárada — Fragments of minor works — 1. Independent works — Vyása — Devala — Pitámaha — Miscellaneous fragments — 2. The several redactions of divers Smṛitis — 3. Metrical fragments attributed to the authors of Dharmastúras and to Manu and Yájnavalkya — 4. Anonymous texts — Date of the Metrical Smṛiti fragments — Legal rules in the Sanskrit play Mṛicchakaṭika — Importance of the Smṛiti fragments.

Number of the Smṛitis

THE important Smṛiti works noticed in the last Lecture represent merely a few select specimens picked out of the vast and almost immense field of Smṛiti literature. The Introductions to the Yājnavalkya and Parāçara Smṛitis name twenty teachers of the Sacred Law. A well-known metrical Smṛiti, the Chaturvimçati-smṛiti, owes its name to its being based on the teaching of the twenty-four earlier authors who are enumerated in the Introduction to that work, and another metrical Smṛiti is similarly called the Shaṭtrimçanmata as recording "the opinions of 36 authors." The figure 36 represents the number of the Smṛitis according to the now current tradition, which distinguishes between eighteen Smṛitis and 18 Upa-smṛitis or secondary Smṛitis. The same statement occurs in some of the Smṛitis themselves, notably in the Paiṭhīnasi and Angiras-smṛitis,[1] and in the Padma Purāṇa. The Smṛiti attributed to Vṛiddha Gautama enumerates 56 or 57 teachers of the Law.[1] Nandapaṇḍita, in the Vaijayantī (LXXXIII. 8), gives 57 as the number of the Smṛitis. The same figure is given in Mitramiçra's Vīramitrodaya, where it is received by adding "21 other Smritis" to the 18 principal and 18 secondary Smṛitis.[2] An examination of the Indian Libraries, as well as of the quotations contained in the Digests and Commentaries, has shown that, in reality, the number of Smṛiti works must have been far greater even than this, and must have amounted to far more than a hundred, including the several recensions which appear to have existed of each work.[3] I will first offer some remarks on the works that have been preserved complete in MS., and then pass on to those Smṛitis of which we possess fragments only.

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[1] Hemādri, Dānakhaṇḍa, pp. 527—529.

Minor Smṛitis.

A number of minor complete Smritis has been printed in Calcutta in Pandit Jibanaṇḍa's collection of 27 Smṛitis,[4] and a great many others have been accessible to me in MSS. A careful perusal of all these works has made me inclined to assent to the judgment passed on these Smṛitis long ago by Professor Max Müller, after he had read the then accessible works of this class, to the effect that they are utterly worthless. They certainly possess hardly any value to the student of law, as with a very few exceptions concerning chiefly the Law of Marriage and Adoption, the whole subject of Civil Law is not even touched in them.[5]

Works in the Sútra style.

Some of these works, such as the Smṛitis attributed to Atri,[6] Bṛihaspati,[7] Budha, Bṛihat, or Vṛiddha, Çankha, Kaçyapa, Kāṇvāyana, Uçanas and Çātātapa,[8] are written in mixed prose and verse or entirely in prose. But part of these works contain distinct indications of having been composed or remodelled in recent times, and the rest are at best extracts from lost Dharmasūtras.[1] Thus the prose Smṛiti attributed to Bṛihaspati seems to be of sectarian origin. The fourth chapter of the Uçanas-smṛiti contains several prose rules on the consequences of a marriage union with a Çūdra woman, which may perhaps be viewed as the source of the corresponding Çloka of Manu (III. 16). In the same work, however, Vasishṭha is quoted as an authority for the statement that a Brahman may take wives of any of the four castes, while exactly the reverse of this doctrine is taught in the genuine Dharmasūtra of Vasishṭha. Budha is hardly ever quoted as an authority in the later compilations on law. The other authors are cited a great deal, but very few of the numerous law-texts quoted of these authors can be traced in the Smṛitis passing under their names, excepting perhaps the Smṛiti attributed to Çankha, in which nearly all the verses, though not the Sūtras quoted of that author, can be actually found.[2] The prose texts of Baudhāyana on Adoption, which are sometimes quoted, are taken from a Sūtra work, but not from a Dharmasūtra. They are contained in a supplement (Pariçishṭa) tacked on to Baudhāyana's Gṛihyasūtra.[3]

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[1] Jibanaṇḍa's Dharmashastrasangraha, I, pp. 498-499; Weber, Ind. Streifen, III, p. 513.

[2] Mandlik, p. xiv.

[3] For a comprehensive list of these works, see West & Bühler. 27-28.

[4] Nineteen of these had been printed before in Calcutta, in Bhavaní-charana's Collection.

[5] See the author's paper on the Smriti texts in Dr. Haug's Collection of MSS., Journ. Germ. O. S. for 1877. These texts are for the most part identical with those Smṛitis which exist in the Elphinstone College Collection of MSS., Bombay. and have since been noticed in V. N. Mandlik's recent work on Hindu Law.

[6] A recension in nine Adhyāyas, four of which are almost entirely in prose (Cod. Haug 127). See Op. cit., and Mandlik, pp. 276-77.

[7] A prose recension in the R. As. Society's Library, London. I know it from a transcript made by Dr. Führer and kindly communicated to me.

[8] See Loc. cit., 128; Mandlik, p. 325.

Metrical Smṛitis.

The great majority of the minor Smṛitis consist of Anushṭubh Çlokas, interspersed in some cases with verses composed in different metres. Some of these works, *e. g.* the Çaunaka,[4] Parāçara and Daksha Smṛitis, cannot be altogether recent productions, because they actually exhibit nearly all those passages which are quoted from them in the authoritative Digests. But the Parāçara-smṛiti certainly cannot be an ancient work either, as it styles itself a production of the present (Kali) age of sin, which has been preceded in three former ages of the world by the Laws of Manu, Gautama and Çankhalikhita. The great Parāçara (Bṛihat Parāçara) is an even more modern work than the Parāçara-smṛiti, also called Laghu-Parāçara, "the short Parāçara." It appears to be, like other works, designed by the epithet Bṛihat "great," an enlarged version of some older work of the same class.

Hārīta.

Among the 111 Çlokas of which one of the divers Hārīta-

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[1] West & Bühler, 36.

[2] *Ibid*, 40.

[3] See Sacred Books, XIV. 334—336.

[4] West & Bühler, 51

Sectarian Works.

Lost work on Civil Law.

smṛitis[1] consists, there are some (61-64, 107-111) treating of the Law of Inheritance. One of these is quoted from Hārīta in such an early work as the Mitāksharā;[2] all the others except one are variously attributed to Vyāsa, Yājnavalkya, Uçanas, Nārada in the Digests, or quoted without naming the source. It appears, therefore, that they were originally common to the Hārīta-smriti and other Smṛitis, and that this Hārīta-smṛiti, insignificant and abrupt as it is, is probably an old composition. A number of other Smṛitis bear evident marks of having been composed for sectarian purposes, and must be quite recent productions therefore. Among the compositions of this kind, as noticed by Dr. Bühler, it is necessary to include further the ample Smṛiti attributed to Vṛiddha Gautama,[3] and perhaps some other works. The numerous texts on all parts of the law, and especially on Civil Law, which are attributed to Vyāsa, Bṛihaspati, Uçanas, Yama, Atri, Angiras, Prajāpati, Devala, Çankhalikhita and other authors, in the authoritative Digests and Commentaries, cannot be found in the metrical Smṛitis now passing under their names. The student of Hindu Law, whom the study of the Mitāksharā and Dāyabhāga has made thoroughly familiar with the names of Bṛihaspati, Vyāsa and the rest as belonging to eminent authorities on law, cannot but feel grievously disappointed on becoming acquainted with the uninteresting treatises on penance, religious rites, pious gifts and other religious subjects which now pass under the names of these authors.

The recently discovered fragment of Nárada.

In turning now to the Smṛiti fragments, I may begin by stating that they are vastly superior in importance to any of the works hitherto noticed in this Lecture. The large fragment recently discovered by Professor Bühler of a different recension of the Nārada-smṛiti than the one known before and translated by myself has first to be considered. The importance of the ancient gloss of Asahāya, by which this version of Nārada's Code is accompanied, has been pointed out in the first Lecture. The remote antiquity of this Commentary is an important, but by no means the only, piece of evidence in favour of the superior authority of this recently discovered version, as far as it goes, as compared to the current version. Unfortunately, it is a mere fragment, and does not extend further than to the middle of the fifth head of dispute (V. 19), where it breaks off abruptly, omitting entirely the thirteen heads of dispute or titles of law that were to follow. But those parts which have been preserved, especially the whole chapter on the Law of Evidence and the section on the mutual obligations of teacher and pupil, are far more ample than, and contain nearly twice as many Çlokas as, the corresponding parts of the current version. Many of these Çlokas may be traced in the oldest compilations on law, such as the Mitāksharā, Smṛitichandrikā, etc., and must have belonged therefore to that version of the Nārada-smṛiti, which the authors of these mediæval works had before them. Thus, a certain Çloka of Nārada stating that a woman may dispose at pleasure of gifts received from a loving husband, excepting immoveables, is constantly quoted in the chapters on Inheritance in all authoritative Digests from the Mitāksharā downwards; but, as has been correctly stated by Colebrooke, it does not occur in the current version of the Nārada-smṛiti. This Çloka is found word for word in the other version, in the chapter on Recovery of Debt.[1] The result of a careful comparison of both versions has been this, that the current version of the Nārada-smṛiti stands to the recently discovered fragment in the relation of an abridgment.[2] There can be no doubt of the genuineness of the current version, as nearly everything it contains occurs in the other version as well as far as it goes, and as upwards of half of the 850 Çlokas of which it consists are quoted in the Digests. On the other hand, should a complete manuscript of the older version of the Nārada-smṛiti, as we may term it, ever turn up (of which, unfortunately, there is very little hope), it may be expected to contain all those numerous texts on every part of Civil Law that are quoted in the Digests. This result is not without some practical importance, as it proves the authority of those texts of Nārada on Inheritance which are quoted in the Digests without being traceable in the current version of this work. The treatment of the Law of Inheritance in the lost part of the older version must have been very copious, as the chapter on Inheritance is said to have consisted of nineteen sections.[1]

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[1] This is another Hārīta-smṛiti than the two Hārītas printed in the Calcutta edition. See Jolly l.c. 129; Mandlik l.c. 288.

[2] Mit. II. 1,37.

[3] It has been printed in Jibanaṇda's Dharmashastrasaṇgraha.

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[1] The current version (I. 3, 30) contains the first hemistich of this Çloka, but the second hemistich has been replaced by a different proposition.

[2] Many other points, which speak in favour of this supposition, might be mentioned. Thus, according to the current version, a person to be tried by the fire ordeal shall step through seven circles with the red-hot iron ball in his hand. According to the other version, the number of the circles is eight, and the same reading is found in a quotation contained in the Vīramitrodaya and other Digests. The whole treatment of the subject of ordeals in the Digests is in a great measure based on texts quoted from the Nārada-smṛiti. Few of these texts can be traced in the current version of that work, but the great majority of them is actually found in the other version. The distribution of the Nārada-smṛiti into chapters is far from clear in the current version. The other version shows the whole work to consist of a general introduction on proceedings at law entitled Vyavahāra-mātṛikā and divided into two sections, and of the ordinary eighteen heads of dispute or titles of law. The first of these, the Law of Debt, has been excessively lengthened by the introduction into it of the whole Law of Evidence.

Date of the Nárada-smṛiti.

The older version is important in this respect also that it furnishes some new data for determining the age of the Nārada-smṛiti. Thus it contains a rule concerning forgery of precious objects, in which "*dīnāras* and other objects made of gold" are referred to.[2] Now, the word dīnāra is derived from the latin *denarius*, which could hardly have been introduced into India till several centuries A. D.[3] Further, the traditional eighteen titles of law are divided into a great number of smaller sections in this work. Thus the Law of Debt has 25 divisions, the law concerning Boundary Disputes has 12, the Marriage Law has 20, the Law of Inheritance has 19, the law regarding Robbery and other Violence has 12. The total number of these divisions amounts to 132. The necessity of introducing them could not have been felt till the progress of Jurisprudence had outgrown the rude classification of an earlier age. Altogether, the older version of Nārada exhibits even more evident marks of recent composition than the current version, and can certainly not be referred to an earlier date than the fifth or sixth century A. D.

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[1] All these nineteen sections, however, as described in the Commentary, may be traced in the same order in the current version as well though each is treated very briefly.

[2] दीनारादि हिरण्मयम्

[3] See West & Bühler, 48. Though golden *denarii* were first coined in Rome as early as 207 B. C., the change of vowel from e to i in the first syllable shows this term to have been imported into India by the Greeks in the time of the Emperors, when the pronunciation of the Greek vowel η had passed from e into i.

Introduction to Nárada.

It should also be mentioned that the introduction to Nārada, which was first translated from the current version in Sir W. Jones's Preface to his translation of Manu, and has since been quoted very frequently on account of its bearing on the history of the Code of Manu, can now be studied in its authentic form in the older version. Its contents may be summarized as follows:[1]—"Manu composed an ample code treating of all possible subjects, human and divine, and consisting of 100,000 Çlokas, arranged in 1,080 chapters. This work he delivered to Nārada, who, for the convenience of mankind, reduced it to 12,000 Çlokas. It was afterwards successively reduced to 8,000 and 4,000 Çlokas by Mārkaṇḍaya and Sumati, the son of Bhṛigu. The original code is now read by the gods only, but the abridgment made by Nārada of the ninth chapter, treating of Civil Law, is preserved in the Nārada-smṛiti." The first Çloka of the original code, which is quoted, corresponds to the 5th and 6th Çlokas of the Manu-smṛiti. Nevertheless, it is that version which is here attributed to Sumati, the son of Bhṛigu, which must have been in the main identical with the now current version, the latter being attributed to Bhṛigu and containing 2,685 Çlokas,—*i.e.*, not much less than the 4,000 of Sumati. Whether this whole account, as far as it concerns Nārada, is more than a fiction got up for the purpose of enhancing the authority of the Nārada-smṛiti, appears very doubtful; but it is certainly interesting for the history of theManu-smṛiti.

The quotations.

Those Smṛiti fragments which will now be noticed have not been preserved complete in any one MS. each; but they may be put together from the immense number of quotations dispersed throughout the Digests and Commentaries. In order to give you an adequate idea of the extent and importance of these quotations, I may mention that they include about 200 Çlokas from Bṛihaspati, and as many from Kātyāyana, on the Law of Inheritance alone. The Yājnavalkya-smṛiti, which has acquired so much celebrity, has not more than 36 Çlokas on the subject of Inheritance.

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[1] The correctness of the above translation is vouched for by the Commentary of Asahāya. Professor Weber, in a Review of the author's translation of the Nārada-smṛiti (see Ind. Streifen III, 491-494), takes the Nārada-smṛiti to be described as an extract from Bhṛigu's recension of Manu. But this view, though admissible with regard to the current version of Nārada, cannot be upheld with reference to the more copious version now discovered.

Most other parts of the law appear to have been treated with equal detail in the lost Smṛitis of Bṛihaspati and Kātyāyana, and many other lost Smṛitis are quoted a great deal now on this and then on that subject. After having collected all quotations of this kind as far as they relate to Civil Law, from as many Commentaries and Digests as I could get hold of, I may say that these quotations do not only give a very good general idea of the nature and contents of the lost Smṛitis, but are so extensive as to enable one to reconstruct large sections of these works in their entirety. This is notably the case as regards the Law of Inheritance; and even the order in which the texts must have followed one another in the lost originals can be ascertained to a certain extent by observing the arrangement followed in the completely preserved works, and putting together the long continuous passages that are sometimes quoted. The variation of reading is, of course, considerable; but in most cases the difference is merely verbal, and does not affect the sense at all or very little.

The lost Smṛitis.

A number of Smṛiti texts are quoted without their authors being named, and several other texts are attributed to some one author in one place, and to a different author in another place. This uncertainty was apparently caused by the early loss of these Smṛitis. It is highly probable that none but the earliest Commentators and Digest-writers possessed complete copies of them, and that the later writers were content to make second-hand quotations. This, with some of them, is an avowed practice. Thus Kamalākara, in the Vivâdatāṇḍava, when quoting a text of the Bṛihaspati, Devala, Prajāpati, Kātyāyana or other now lost Smṛitis, adds very commonly that the text in question has been taken by him from the Kalpataru, Madanaratna, Pārijāta, Aparārka or some other noted Digest. He seldom or never makes a remark of this kind in the case of such works as the Manu, Yājnavalkya or Gautama Smṛitis, and it may be inferred from this that, in his time, *i.e.* in the 17th century, just as now-a-days, the latter works existed in MSS., but not the former. Moreover, an examination of the various readings in the quotations shows, that all the writers of one province generally follow the same reading, and that the modern writers beginning with the 15th and 16th centuries or so quote few texts that cannot be traced to some earlier Digest or Commentary. This goes far to show that these writers, as a rule, did not consult the

Smṛitis at all,[1] but merely the standard Commentaries and Digests, and accounts thus for the gradual loss of nearly all those works, which were not accompanied by an authoritative Commentary. It is not altogether impossible that a complete copy of the Bṛihaspati, Kātyāyana or some other lost Smṛiti may hereafter be discovered in a forgotten nook of an Indian Library, just as a complete copy of Vasishṭha's Dharmasūtra and the fragment of the older Nārada-smṛiti has not turned up till quite recently. But it is more probable that the Smṛitis of Kātyayana, Bṛihaspati and the rest had been embodied so completely in the early Digests, that they gradually ceased to be studied, and even to be copied, as independent works.

Fragments of Dharmasútras.

Turning from these general remarks[2] to those among the lost Smṛitis that are specially important for Civil Law, I will first notice those works which, judging from the fragments, were written in prose or in mixed prose and verse, and may therefore be referred among the earliest class of law-books, the Dharmasūtras. Such works are the Hārīta, Çankhalikhita, Çankha, Uçanas and Paiṭhīnasi Smṛitis.

Háríta.

The claim of the Hārītasmṛiti to the title of a Dharmasūtra is supported by conclusive evidence of two other kinds. First, there is one prose text attributed to Hārīta, in which "the holy Maitrāyaṇi" is referred to as an authority.[3] This makes it probable that Hārīta was the authoritative teacher of a school studying the Maitrāyaṇī Çakhā of the Yajurveda. Secondly, the prose texts attributed to Hārīta show the same archaic language and compact style as the Dharmasūtras. Some of the Çlokas ascribed to Hārīta may also have belonged to his Dharmasūtra, which cannot have been entirely in prose, as such an early work as the Dharmasūtra of Vasishṭha quotes from a metrical Smṛiti of Hārīta. But the majority of the numerous Çlokas attributed to Hārīta in the Digests cannot have formed part of his Dharmasūtra, as they exhibit a full acquaintance with the technical terms used by the Indian jurists to denote the divers kinds of an answer in a judicial proceeding, with the mode of testing the disputed authenticity of a document, and other such modern institutions. The prose texts attributed to Çankhalikhita are similar in character to those quoted of Hārīta, and some of these texts appear to have been common to both authors. The few Çlokas attributed to the former do not contain anything that could not have occurred in any Dharmasūtra, and may have belonged to the same work as the prose passages. What has been said of Çankhalikhita applies equally to Çankha. Both authors are frequently confounded. The few texts attributed to Uçanas and Paiṭhīnasi are likewise partly in prose and partly in verse, but they are too scanty to admit of forming a definite estimate of the character of these two Smṛitis. Çankhalikhita quotes a prose rule of Uçanas, which is not found among the fragments of this author.

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[1] That they were consulted occasionally in important cases may be seen from a passage of the Mayūkha (IV. 5, 10), where a certain text quoted from the Kālikāpurāṇa is said to possess no authority, because on looking it up in two or three MSS. of that work it has not been found in them. However this observation is common to several Digest-writers, and they can hardly be supposed to have consulted the Kālikāpurāṇa each independently of the rest.

[2] It may be observed here that the rather numerous and curious texts, which are quoted in the Sarasvatīvilāsa but nowhere else, have not been extracted from that work, because their authenticity is more than doubtful.

[3] Bühler, Sacred Books, XIV, p. xxi.

Cankhalikhita. Cankha. Uçanas and Paiṭhínasi.

Bṛihaspati and Kátyáyana.

Among the fragments of metrical Smṛitis, the texts attributed to Bṛihaspati and Kātyāyana occupy by far the most conspicuous place. Both authors are frequently confounded in the quotations; they mutually quote one another, and agree so closely in their treatment of the law and in the use of technical terms, that they may be supposed to have been quite or nearly contemporaneous.[1] As for the date of these two authors, it is important to observe first of all the relation in which the Smṛitis composed by them stand to the Code of Manu.

Bṛihaspati.

Bṛihaspati propounds the maxim that any Smṛiti text militating against an enunciation of Manu has no validity. That this maxim refers to a work much like the now extant Manu-smṛiti is proved by many of the fragments attributed to Bṛihaspati, which show a thorough acquaintance with the contents of the Code of Manu. Several of these passages have the appearance of a Commentary on that work. Thus in discussing the means of recovering an outstanding debt, Manu makes use of several curious technical terms (VIII. 49). Bṛihaspati devotes one special explanatory Çloka to each of these terms in order. Bṛihaspati distinguishes substantially the same eighteen titles of law as Manu, though he distributes them into fourteen titles relating to property and four titles relating to the causing of injuries (*Himsodbhavāni*), and adds an appendix treating of Sundries (*Prakīrnakam*). One of the eighteen titles of law in the Code of Manu is called sale of a commodity by a person not its owner (Asvāmin). The term Asvāmin being somewhat uncommon is accurately defined in a Çloka of Brihaspati. In other places, not content with the task of a mere Commentator, Brihaspati, by means of an ingenious method of interpretation, has explained away such rules in the Code of Manu as were not in accordance with the practice of his own age. The most instructive instance of this kind occurs in three Çlokas of Brihaspati on the subject of the Niyoga, *i.e.*, the custom of raising offspring to a childless widow. This custom, he says, is ordained and described by Manu, and again prohibited by the same. This is because the Nigoya is no longer admissible now on account of the successive deterioration of mankind in the four ages of the world. In the former ages, men were eminently virtuous and wise, but in the present age of the world, their capacity is weak. Therefore the divers kinds of adoption which were practised by the ancient sages cannot be practised by the people of the present day. On the subject of gambling, Brihaspati states correctly that it is forbidden by Manu (IX. 221-228), but permitted by others, in case a share of the profit be given to the King. He endeavours to remove this contradiction by laying down the rule that gambling shall be practised under the superintendence of public officials for the purpose of detecting thieves. In speaking of certain objects declared indivisible by Manu, he goes the length of taxing Manu with error, though he does not refer to him by name, no doubt because he would not seem to differ from so high an authority. I am referring to the six verses in which Brihaspati states his views regarding indivisible objects. He commences his exposition by stating that those who laid down the indivisibility of clothes and the rest have not decided properly. That the expression "clothes and the rest" relates to the objects mentioned as indivisible by Manu (IX. 219), is shown by the following verses, in which Brihaspati discusses the other indivisible objects in the same order as they are enumerated by Manu. Under these circumstances the tradition recorded in the Skānda-purāṇa,[1] which makes Bṛihaspati the author of the third of four versions of the Code of Manu, acquires some importance. It certainly deserves more credit than the statement contained in the same text that the second version of Manu is due to Nārada. This may be seen by comparing, *e. g.*, Nārada's and Bṛihaspati's versions of the eighteen titles of law. Nārada differs considerably from Manu as to the names and arrangement of several titles, and subdivides them altogether into 132 sections. Bṛihaspati's eighteen titles, as pointed out before, are substantially identical with Manu's.

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[1] Dr. Burnell supposes that two different recensions existed of both Kātyāyana and Bṛihaspati.

Kátyáyana.

Kātyāyana's texts also have in several cases the appearance of glosses on the now extant Manu-smṛiti. A clear instance of this from the section on Inheritance is furnished by Kātyāyana's treatment of the Law of Strīdhana. After giving an enumeration of the six kinds of Strīdhana, which is word for word the same as Manu's, he proceeds to explain them in several Çlokas, and he adds some other Çlokas intended to define the meaning of other kinds of Strīdhana besides those six. One of these kinds—the gift subsequent to marriage—is specially mentioned in the Code of Manu (IX. 195) as well, and this may be viewed as the reason why Bṛihaspati thought it necessary to explain the term. It is true, on the other hand, that certain statements which Bṛihaspati attributes to Manu do not occur in his code, and are even directly opposed to his teaching. Thus, *e. g.*, he quotes Manu or Bhṛigu as the authority for the doctrine that the ordeal by sacred libation shall be administered where effects belonging to the family property are suspected to have been concealed at the time of partition. The Code of Manu contains no rule of this kind, nor does it refer to any other ordeal except the water and fire ordeals. However this may be explained, whether as showing that Kātyāyana knew more than one version of the Code of Manu, or that the Code of Manu has been considerably altered since his epoch, or that he quoted from memory only, or in some other manner, a comparison of the rules of Manu and Kātyāyana on written documents, on the administration of ordeals, on the proprietary rights of females, on self-acquired property, in fact almost on every part of the law, shows that the latter author must be referred to a far later period in the history of Indian Law than the former. In some cases

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[1] See above, p. 46.

Kātyāyana supplies explanations to difficult technical terms used by Bṛihaspati. Thus the latter refers occasionally to debts contracted from love or anger. Kātyāyana explains what sort of debts are referred to by these terms. In several other cases however Bṛihaspati in his turn is more explicit than Kātyāyana, and the composition of both works, as pointed out before, must belong very nearly to the same epoch.

Comparison of these two authors with Yájnavalkya and Nárada.

As for their relation to the Yājnavalkya and Nārada Smṛitis, it is quite clear that they must be posterior to the former work. Thus in comparing Yājnavalkya's rules on the Law of Strīdhana with those of Manu on the one hand, and those of Kātyāyana on the other hand, it will be found that Yājnavalkya's treatment of this part of the law occupies an intermediate position between the extremely detailed rules of Kātyāyana and the scanty provisions of Manu. Both Kātyāyana and Bṛihaspati refer to several other kind of ordeals, besides the five sorts mentioned by Yājnavalkya. Bṛihaspati speaks of four and Kātyāyana of five sorts of sureties instead of the three sorts of Yājnavalkya. Both authors give a great many detailed provisions regarding every part of a Judicial Proceeding, of which the Yājnavalkya-smṛiti does not exhibit the slightest trace, etc. The case is not equally clear as regards the priority of the fragments of Bṛihaspati and Kātyāyana to the Nārada-smṛiti. The older version of that work in particular contains so many technical details on proceedings at law, which correspond precisely to Bṛihaspati's and Kātyāyana's rules on the same subjects, that it is necessary to refer its composition to nearly the same modern epoch. Moreover, the Nārada-smṛiti agrees with these works in the use of the term Dīnāra. On the other side of the question, it may be argued that Brīhaspati and Kātyāyana define the value of a Dīnāra (=1 Suvarṇa,) which shows that they are acquainted with its use as a coin, whereas Nārada seems to refer to Dīnāras used as ornaments only.[1] There are some points, too, such as *e. g.* the enumeration of twelve sorts of witnesses and of seven sorts of private and three sorts of royal documents by Bṛihaspati, and the enumeration of a host of incompetent

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[1] West & Bühler, 47-48; Führer, Lehre von den Schriften in Bṛihaspati's Dharmaçāstra. It may be mentioned in connection with this subject that Bṛihaspati refers to the Persians by the name of Pāraçikas, which term does not occur in early Sanskrit Literature.

LECTURE III.

sureties by Kātyāyana, in regard to which even the older and more copious version of Nārada cannot vie in completeness and systematic treatment with those two authors, who cannot be placed earlier than the 6th or 7th century, if Nārada has been rightly referred to the 5th or 6th century. The remaining Smṛitis which are quoted as authorities on Civil Law may be divided into four classes, the first of which comprises the independent works of Vyāsa, Devala, Pitāmaha, Yama, Atri, Prajāpati, Kaçyapa, Bhāradvāja, Ṛishyaçṛinga, Samvarta, Angiras, Prachetas, Sumantu and some other authors. All these writers are very much inferior in importance to Bṛihaspati and Kātyāyana, and the fragments attributed to them are for the most part so scanty, that it is impossible to fix their dates with any thing amounting to precision.

Fragments of minor works.

1 Independent works.

Vyás

Vyāsa shows himself acquainted with most of those technicalities, which had been introduced into Judicial Procedure by the Schools of Law, and he occasionally goes even beyond Nārada, Kātyāyana and Bṛihaspati in detailed treatment of this subject. Thus, *e. g.*, his rules on documents, especially on forged documents, are very minute. In the Law of Debt he enumerates seven sorts of sureties, *i. e.* two more than Kātyāyana, and three more than Bṛihaspati. In treating of Strīdhana he mentions and defines the species of Strīdhana, called Saudāyika, and fixes the maximum amount of Strīdhana to be given to a woman at two thousand Paṇas. Both rules occur in no other Smṛiti except Kātyāyana's.

Devala.

Devala's definition of the meaning and extent of the term Strīdhana is more wide than that of any other author. On the other hand, he assigns to the widow the last place in the order of heirs to one deceased without male issue, which is contrary to the ruling even of such comparatively early authors as Vishṇu and Yājnavalkya.

Pitámaha.

Pitāmaha is quoted as an authority particularly on the Law of Evidence, and no other author has left us such detailed descriptions of all the nine sorts of ordeals as he. Besides he refers to the eight parts of a Judicial Proceeding much in the same way as Nārada, and mentions 22 law cases to be brought before the King, which appear to correspond to the eighteen old titles of law. He also refers to the Bhils and other low castes which are never mentioned in the oldest law-books.

Regarding the other writers of this class it is hardly safe

Miscellaneous Fragments.

for the present to venture a more definite statement than this that they belong more probably to the latest than to the earlier phases in the growth of Indian Law. Thus the Angiras-smṛiti ordains the performance of Satī, which is also recommended in the Smṛitis of Vishṇu, Bṛihaspati, Vyāsa, Hārīta and in some others, but in none of the oldest works.[1] Bhāradvāja speaks of two sorts of pledges that are not mentioned anywhere else. That the author of the Smṛiti-saṇgraha (Saṇgrahakāra) cannot be an early writer is shown by the meaning of Saṇgraha, *i.e.* collection, this collection being no doubt made up of the sayings of earlier sages; and this supposition is fully borne out by the contents of the fragments quoted from the Saṇgraha.[2]

2. The Several Redactions of divers Smṛitis.

The works attributed to Vṛiddha or Bṛihan-Manu, V. or Bṛihad Yājnavalkya, V. or B. Vasishṭha, V. or B. Vyāsa, V. Gautama, V. Kātyāyana, V. or B. Bṛihaspati, Laghu and V. or B. Hārīta, etc., are, by the addition of such epithets as these, distinguished from Manu, Yājnavalkya, etc., themselves. It has been sometimes supposed that the addition of the epithet Vṛiddha "old," *e. g.*, to the name of Manu, proves that this "old Manu" must have lived in an earlier epoch than the author of the Code of Manu. But an examination of the facts shows that no genuine historical tradition is embodied in these epithets. Thus the metrical Smṛiti of Vṛiddha Gautama, "the old Gautama," as published in Calcutta, is clearly a modern production, of sectarian origin, and separated by thousands of years from the Dharmasūtra of Gautama. It differs likewise from that metrical Smṛiti of Vṛiddha Gautama, which is occasionally quoted in the authoritative Digests, and this work also, though older than the one printed in Calcutta, must be more recent than the Dharmasūtra. Among the few Çlokas attributed to V. or B. Manu are three on the transport of commodities and the hire of vehicles, which are similar to the corresponding rules of Yājnavalkya and Nārada, and show that the Law of Commerce and Trade must have been comparatively developed at the time of their composition. They also contain two words which have a modern appearance, the noun bhāta, hire, and the verb bhāṭayati, he hires. Professor Max Müller has shown, in his recent Cambridge Lectures, that Vṛiddha-Manu was acquainted with that kind of Astrology which seems to have been derived from a Greek source. What is even more significant, a verse of Vṛiddha-Manu, which is frequently quoted in the Digests, contains the rule that a chaste widow, who has no son, shall succeed to her husband. The Code of Manu, on the contrary, does not recognize the widow's claim to the Inheritance in any case, and this is evidently the older opinion of the two, as will be shown in another Lecture. These facts tend to show that the author of the Vṛiddha-Manu-Smṛiti, whoever he may have been, was a recent writer. He was acquainted probably with the Code of Manu, and chose that appellation in order to ensure to his production the authority of a work composed by the first of legislators, while distinguishing it at the same time from the current version of the Code of Manu. It has been argued that the epithets Vṛiddha, Bṛihat, &c., may have been coined in order to distinguish the several metrical redactions existing of each early Sūtra work.[1] It is, indeed, quite possible, and even probable, that several of these epithets did not spring up before the epoch of the Commentators. Such epithets as Bṛihat, "great," Laghu, "small," Çloka, "metrical," apply to works rather than to authors, and the two terms Bṛihat, "great," and Vṛiddha, "old," are frequently interchanged. But it is obvious that the opinion of the Commentators has very little weight for determining the age of any such composition, especially as the Commentators are very careless in using these epithets, and are not even agreed about their meaning. Thus the Mitāksharā (II. 1. 6), in quoting a passage from Vishṇu's Dharmasūtra, denotes that author, or rather his work, Bṛihad-Vishṇu, "the great Vishṇu," probably in order to distinguish this work from the metrical Smṛiti of Vishṇu, which is quoted in other parts of the Mitāksharā. In other Commentaries, however, the author of the Dharmasūtra is generally called Vishṇu simply. The term Vṛiddha means "old," and is frequently used by the Commentators to denote the date of an author. Some Commentators, however, are of opinion that such epithets as Vṛiddha, "old," imply different periods in the lives of the same authors. Under these circumstances we are left to ascertain the comparative age of the supposed several recensions of each Smṛiti through internal evidence alone, and internal evidence certainly points to their being in reality entirely independent from each other, and composed at different times by different authors. The authors to whose name an epithet is added are, however, generally more recent than those without an epithet. In some cases, these names may never have belonged to complete works. Thus when the Smṛitichandrikā, Vivādatāṇḍava and other Digests attribute to Vṛidda-Yājnavalkya a verse which corresponds very nearly to a passage of the current version of Yājnavalkya (II. 149), it may be presumed that it was precisely the existing slight difference of reading which caused them to qualify the name of Yājnavalkya in this case by adding the epithet Vṛiddha. The number of quotations from Vṛiddha or Bṛihad Yājnavalkya is so small that the former existence of a complete work attributed to that author is more than doubtful.

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[1] See below, p. 80.

[2] Thus the Saṇgraha contains some curious speculations about the nature of Property and of Inheritance. Several customs, the performance of which is enjoined in the other works, are declared obsolete in the Saṇgraha.

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[1] See Dr. Rajendralala Mitra's remarks, quoted in Rajkumar Sarvadhikari's Lectures, 169 note.

Metrical fragments attributed to the authors of Dharmasútras

3. Apastamba, Gautama, Vasishṭha, Baudhāyana and Vishṇu are quoted as the writers of metrical texts not found in those works. This might be taken to prove that their Dharmasūtras have not been preserved entire. But the thoroughly modern appearance of most of those metrical passages renders it highly improbable that they should ever have formed part of a Dharmasūtra. The limited number of Çlokas which, though attributed to Manu and Yājnavalkya in some Digests, do not occur in the Smṛitis composed by these authors, are either spurious, or have been attributed to these authors by mistake.

And to Manu and Yájnavalkya.

4. Anonymous texts.

4. The origin of the rather numerous texts, which are quoted as Smṛitis without the names of their authors being given, is difficult to determine. In some cases the author's name is missing in one Digest, but supplied in another. The loss of the author's name might be equally attributed to carelesness in the other cases. But it is more probable that most of the anonymous Smṛitis represent sayings current in the more recent law-schools of India and comparable to the law proverbs of other nations. As an instance of an anonymous Smṛiti exhibiting specially clear marks of recent composition, I may refer to the long text concerning obsolete laws, which has been translated in the General Note to Sir W. Jones's version of Manu.

The immense number and variety of the fragments

Date of the metrical Smṛiti fragments.

noticed in this Lecture shows how vast the extent of Smṛiti literature must have been, and how intensely its partial loss has to be deplored by the student of Hindu Law. Schools of law were spread, no doubt, over the whole Continent of India, and it is impossible to tell how much of the diversity of doctrine observable in the Smṛiti fragments has to be attributed to the different times, and how much to the different countries in which their authors may be supposed to have lived. Thus much however is certain, that the most recent metrical Smṛiti fragments even must be older than the 11th and 12th centuries in which most of them are quoted as inspired writers by Vijnāneçvara and Aparārka, and older for the most part even than the 8th or 9th century, in which many of them are quoted by Medhātithi.

Legal rules in the Sanskrit play Mṛichakaṭika.

By referring Bṛihaspati and Kātyāyana to the 6th or 7th century, as has been done before, these two writers are made nearly contemporary[1] with the author of the well-known drama Mṛicchakaṭika, and as that drama contains a full description of a Judicial Proceeding, which is probably pourtrayed from life, it is interesting to compare that description with the rules given by Bṛihaspati and Kātyāyana. One of the most curious features in the Judicial Proceeding described in the Mṛicchakaṭika, *viz.*, this, that all the statements of the parties and witnesses are written down on the floor by the scribe, corresponds actually to the rules of Bṛihaspati, Kātyāyana and Vyāsa on the subject. Thus it is ordained by Bṛihaspati that the Judge shall cause the plaint to be written[2] and re-written on the floor, till everything in it is quite clear, and though he refers to other modes of committing the depositions of the parties and witnesses to writing besides this, it appears to have been a very common proceeding to use the floor of the judgment-hall for that purpose. The Judge in the Mṛicchakaṭika is assisted by the chief of a guild of merchants, by a scribe and by a beadle. Kātyāyana says that a few virtuous merchants shall be present at every Judicial assembly. Bṛihaspati, Nārada and others name the scribe and the beadle among the eight or ten regular members of a Court. The sentence passed by the Judges in the Mṛichchakaṭika is supported by them with a quotation from the Code of Manu, to the effect that a Brahman is not liable to capital punishment, and can only be banished, taking with him his entire property. This rule is actually found in the Code of Manu (IX. 241), and as for the consultation of that work by the Judges, it has been shown in the last Lecture that Bṛihaspati ordains the law-book to be consulted in every Judicial proceeding. The Mṛicchakaṭika enumerates the qualities required in a Judge, among which a thorough knowledge of the law-books ranks first. Similar statements may be found in most Smṛitis. Chārudatta, the hero of the Mṛicchakaṭika, after having been innocently sentenced to death, complains that none of the customary ordeals by poison, water, balance, or fire has been administered to him. Kātyāyana and Bṛihaspati, as well as Yājnavalkya, Nārada and others, describe the mode of performing these and other ordeals. Kātyāyana says, moreover, that an ordeal must be administered to any one, who by its performance wishes to clear himself from suspicion, and Yājnavalkya states (II. 96, 99) that an ordeal shall be performed in all heavy cases.

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[1] This drama must have been composed before the time of King Çrīharsha, 600 A.D., but it is probably not much older.

[2] In the law-suit described in the well-known farce Dhūrtasamāgama, the plaint is likewise written on the floor (भाषां भूमौ लिखित्वा). See Führer, Lehre von den Schriften, p. 30.

Importance of the Smṛiti fragments.

I have dwelt thus long on these analogies between one of the most celebrated Sanskrit plays and the teaching of the later Smṛitis, because they contain most valuable evidence in favour of the practical character of these works. It has been seen in the first Lecture that the Commentaries and Digests, which form the basis of the modern law of India, are by no means free from unprofitable speculations and learned pedantry. Besides, the task of reconciling all the discordant texts of the Smṛiti-writers must have been simply appalling. It is important to notice that, in acquitting themselves of this task, the later jurists have generally stuck to the rules embodied in the more recent Smṛitis, such as the works of Bṛihaspati and Kātyāyana. This circumstance furnishes a further argument in favour of the practical value of the Commentaries and Digests compiled by them.

LECTURE IV.

THE HINDU FAMILY SYSTEM ACCORDING TO THE SMṚITIS.

Comparative Jurisprudence — The Orientalist's task — Division of the subject — Religious character of marriage in India — Marriage a necessity — Wedding customs not mentioned in the Smṛitis — Reasons to account for this circumstance — The eight marriage forms, formerly six, originally three — Origin of the more recent forms — Baudháyana on marriage — Informal marriage — Marriage by purchase — The legal position of women — The damsel — The wife — The widow — References to Satí — The position of women in Indian fiction — The truth about Satí — Proprietary rights — The joint-family — Position of the father — Position of the mother — Special dignity attaching to her — Gradual restriction of the father's power — What was left of it — Right of primogeniture — Position of the manager — Mode of enjoyment of common property.

Comparative Jurisprudence.

In this Lecture I propose to discuss some of the leading features of the early family law of India. The constitution of the family and the collective forms of property in India have been receiving a considerable amount of attention lately from a number of eminent writers in different parts of Europe, who, from the high pinnacle of Comparative Jurisprudence, have been looking out carefully for all vestiges anywhere to be detected of that earlier stratum of legal institutions on which the social system of modern Europe has been raised. The results of their researches have in their turn contributed a great deal towards a right appreciation of the growth and origin of a number of legal rules in the Indian law-books, which, but for the torch-light of Comparative Jurisprudence, might have retained their strange and perplexing appearance to the last. By comparing with the Indian Law the institutions exhibited in the ancient legislations of Europe and preserved among some of the Slavonic tribes down to the present day, it has become possible to point out the connecting links between institutions even so widely different as those of modern India on the one hand, and modern England on the other hand. It is not my intention to expatiate on this theme. Thanks to the researches of Sir H. Maine and others, the common possession by the Aryan nations of a number of ancient customs and legal rules has become a truism. The task of the Orientalist lies in a different direction. His is the historical, and not the comparative method of study. Let Comparative Jurisprudence trace the remote beginnings of the modern institutions of India. It remains for the Historian and Orientalist to investigate the series of gradual changes which have transformed the earliest recorded laws into the rules prevalent in the present day, and to examine the vast detail of the legal history of India.

The Orientalist's task.

The general principles of the early Indian family law may be classed under three heads: 1, marriage laws and the legal position of women; 2, the relations between male relatives in the ascending and descending lines; 3, the rights and duties of male collateral relatives.

Division of the subject.

Marriage, according to the old Sanskrit law-books, is not a mere social contract, but a strictly religious institution, to which the famous definition of marriage in Roman Law is fully applicable. It is, indeed, as in ancient Rome, an association for life, and productive of a full partnership, both in human and divine rights and duties.[1] Thus it is stated by Apastamba (II. 10, 27, 1) that the connection (of husband and wife), takes place through the law. The wife is not merely her husband's helpmate in all worldly affairs, but she assists him in the performance of the regular sacrifices, and helps him to gain heaven. A legitimate wife is therefore called Dharmapatnī, *i.e.*, as the Commentators explain, Dharmārtham patnī,—a wife married for the fulfilment of the Sacred Law. An English writer (Grady) designs the Law of Marriage as "the great point to which all Hindu Law converges." It is certainly not too much to say that Marriage is the one decisive event in the life of a Hindu woman. No other of the Indian Sanskāras or sacraments than the marriage ceremony can be performed for a woman, but the performance of this ceremony for her is obligatory.

Religious character of marriage in India.

Nothing, indeed, is better capable of characterizing the religious sanctity attributed to marriage in the Hindu law-books, than the rule that neither any man nor any

Marriage necessity.

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[1] Nuptiæ sunt conjunctio maris et feminæ et consortium omnis vitæ, divini et humani juris communicatio.

woman must remain unmarried. In order to insure the strict observation of this rule, even after the death of the father, on whom the duty to provide for his sons in marriage devolves in the first place, it is ordained that in such cases the expenses of the marriage and other customary ceremonies have to be defrayed by the brothers.[1] As regards the marriage of females, the ruling of the Indian Legislators is even more explicit. They enumerate a whole series of Kanyāpradāh, *i.e.*, persons, on whom it is incumbent each, on failure of the preceding one in order, to give a maiden in marriage. Manu (V. 15 1), it is true, names the father and brother alone, the brother requiring the paternal assent for giving away a sister; and Samvarta states that a mother, father or eldest brother, who have failed to give a grown-up girl in marriage, shall go to hell.[2] Vyāsa, however, refers to the father, father's father, brothers, paternal uncles, relatives (Jnāti) and the mother in succession,[3] and analogous enumerations are given in other Smṛitis. According to Kāmadeva and Nārada, the King is to give a maiden away on failure of relatives.[4] The rules of Yājnavalkya, Vishṇu, and Nārada, on the subject of guardianship over a maiden, which differ slightly *inter se*, have become the foundation of the modern law and of the difference of opinion which exists in reference to this subject between the Bengal writers on the one hand, and all the other writers on the other hand.[5] The custom of child-marriages evidently was as universal in ancient times as it is now.

Wedding customs.

The sanctity of the marriage tie is further illustrated by the numerous rites which are held essential in a wedding ceremony. Many curious details about the ancient marriage rites may be found in the Grihyasūtras,[6] and the complete publication of these valuable records of the past social life of India, which is a great *desideratum* of science, would throw much new light on the history of the marriage ceremonies in India. What has hitherto come to light of these works has been sufficient to prove the existence of a surprising similitude between the old wedding customs of India and the corresponding usages of other Aryan nations.[1]

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[1] Nārada, XIII. 33, 34.
[2] See Pandit Jibananda's Dharmashastrasangraha, I, p. 590, çl. 67.
[3] *Ibid*, II. 325, çl. 6.
[4] Ind. Studien, V. 310; Nārada, XII. 22, 23.
[5] See Dr. G. D. Banerjee, Hindu Law of Marriage and Strīdhan, 47.
[6] *Ibid*, 98—99, 237—274.

Not mentioned in the Smṛitis.

The Smṛitis contain little or nothing about the marriage ceremonies, except occasional references to the ceremonies of Pāṇigrahaṇa, or acceptance of the bride's hand, and of Saptapadī, or walking of the seven steps, as also to the Mantras to be recited on these occasions. Instead of this, most Smṛitis enumerate and describe eight forms of marriage, five of which are absolutely equivalent to purchase (of two kinds), forcible abduction, rape, and illicit connection without parental consent. From this it has been sometimes inferred that the performance of certain ceremonies, or indeed, of any ceremony, is not necessary to constitute a valid marriage according to the Hindu Law. But the idea of marriage as a mere civil institution is wholly foreign to the Hindu mind. The silence of the Smṛitis about the marriage ceremonies is easily explained by considering the origin and nature of these works. It has been shown that the Dharmasūtras were not independent works, but parts of a whole. The description of the Saṇskāras, or sacraments, fell within the province of a different class of Sūtra works, the Gṛihyasūtras; and the way in which the authors of the Dharmasūtras refer to the Saṇskāras shows that they expected their readers to know them from the Gṛihyasūtras. The Dharmasūtra of Apastamba contains several express references to the Gṛihyasūtra of the same school. Thus, in the section on funeral oblations, the Dharmasūtra prescribes that the sacrificer shall eat a small mouthful of the oblation in the manner described (in the Gṛihyasūtra). On referring to the Gṛihyasūtra it is found that a certain Mantra has to be recited on this occasion. Similarly, because the Dharmasūtras fail to give a description of the wedding ceremonies, that description had to be supplied from the Gṛihyasūtras. The metrical Smṛitis follow the Dharmasūtras on this as on most other points.

Reasons to account for this circumstance.

The nature and origin of the eight traditional marriage forms[2] has been the subject of much discussion. Some new

The eight marriage

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[1] See Haas and Weber, Indian Wedding Customs, in the Ind. Studien, Vol. V; Kohler, Indisches Ehe-und Familienrecht, Vol. III of the Zeitschrift f. vergleich. Rechtswissenschaft.

[2] Manu, III, 20—34; Gaut., IV, 6—15; Yājn., I, 58—61; Vishṇu, XXIV, 18—28; Nārada, XII, 39—45; Baudh., I, 11, 20; Cankha, IV, 2—6; Açvalāyana Gṛihyasūtra, I, 6.

facts regarding the history of this strange classification may be gathered from the recently translated Dharmasūtras. Apastamba (II. 5, 11, 17—20) and Vasishṭha (I. 28—35) agree in referring to six marriage forms only. They omit the Prājāpatya and Paiçācha[1] forms, which are precisely the least intelligible forms of all. It is permitted to conjecture, therefore, that the introduction of these two marriage forms belongs to a subsequent epoch. Vasishṭha differs besides from all other writers as to the names which he assigns to the sale and to the capture of a maiden. The latter form of marriage, which is usually styled the Rākshasa rite, he calls the Kshātra rite, *i. e.* the rite destined for the Kshatriyas or warriors; and the sale of a maiden, usually termed Asura rite, is by him designed as the Mānusha rite, *i.e.* the rite destined for ordinary mortals. The use of these terms, which have a very archaic appearance, renders it highly probable that the origin of this whole classification was closely connected with the Indian caste system. The Brāhma, Kshātra and Mānusha rites, *i. e.* the solemn gift of the bride with the customary wedding ceremonies, the forcible abduction, and the sale of a maiden, are apparently the three oldest forms, and they were destined for the Brahman, Kshatriya and Vaiçya, or Çūdra castes, respectively. Now, the term Brāhma is ambiguous, and may denote either what relates to the Brahmans, or what relates to the god Brahman. The later writers took it in the latter sense, and invented a new and more complete system of classification of the marriage forms, which corresponds to the popular classification of the gods and spirits. The Vasishṭha-smṛiti exhibits a mixture of the two systems, the old and new one. The three old names, which connect the marriage forms with the caste system, are preserved; and this accounts for the fact that Vasishṭha does not think it necessary to say which form is suitable for which caste, as is done in the other Smṛitis. All the other Smṛitis have retained the term Brāhma only, and changed the two other forms; most Smṛitis have moreover introduced two forms of marriage, which were unknown both to Vasishṭha and to Apastamba, as has been already noticed.

forms, formerly six.

Originally three.

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[1] It may be observed that Açvalāyana's definition of the Paiçācha form differs from the ordinary one. According to him, it consists in forcible abduction of a maiden, while her guardians are asleep or intoxicated.

Origin of the more recent forms.

If this conjecture regarding the origin of the marriage forms is correct, it tends to account for the existence of special denominations for such slightly differing forms of marriage, as the Brāhma, Daiva and Prājāpatya forms. The only *raison d'être* for the Daiva and Prājāpatya rites is this, that it was held necessary to have as many marriage rites as there were classes of divine beings. For similar reasons the Arsha form was added to the list, though it agrees with the Asura form in representing a sale of the maiden to the bridegroom. The Gāndharva form might have been invented in compliance with the popular tales of love-matches of eminent heroes, which have found entrance into the Indian epics.

Baudháyana on marriage.

Some further facts regarding the nature of the eight marriage rites may be elicited from the recently published Dharmasūtra of Baudhāyana (I. 11, 20). This writer, after stating that the four first forms only are lawful for a Brahman, goes on to say that the capture and sale of a maiden agree with the law of the Kshatriya or warrior caste, because power is their attribute, and that love-matches and rape are fit for Vaiçyas and Çūdras. The reasons which he assigns for the latter rule is this, that Vaiçyas and Çūdras are not particular about their wives, because they live by low occupations. The opinion of Baudhāyana appears to be this, that, among members of the lower castes, even illegitimate methods of obtaining dominion over a maiden are perfectly allowable, because these castes do not stand on the same moral level as the Brahmans. It will be seen further on, that, in the case of Çūdras, the right of illegitimate sons to the inheritance is nearly equal to the right of legitimate sons.

Informal marriage.

The commentators assert that all the lower forms of marriage must be understood to be regularly followed by the performance of the ordinary marriage ceremonies. The same opinion is expressed by one of the Smriti writers themselves, *viz.*, Devala, who states that even in the Gāndharva and other low forms of marriage, the performance of the nuptial rites cannot be dispensed with. It may, however, be doubted whether the ancient writers, such as Manu, Baudhāyana, and Apastamba would have shared this view. The low estimation in which the lower castes were held by them makes the contrary highly probable, at least as far as the lower castes are concerned, for which the lower forms of marriage are principally intended. No doubt, the lower castes used to practise special ceremonies on occasion of a wedding in ancient times as well as now-a-days; only the Brahmanical Legislators did not care whether these ceremonies were practised or not.

Marriage by purchase.

It is quite clear, however, that the most common among the lower forms, *viz.*, the sale of a maiden, was by no means confined to the non-Brahmanical castes. The very vehemence of the attacks which are levelled against this practice by the Brahmans affords evidence in favour of its common occurrence among all castes. The following text occurs in two recensions of the Yajurveda, and is quoted by Vasishṭha—"She commits sin who unites herself with strangers, though she has been purchased by her husband."[1] This text seems to indicate a state of society when the payment of a bride-price by the husband was necessary to constitute a valid marriage. An analogous text is found in two Gṛihyasūtras and in too Smṛitis:[2] "Therefore one hundred (cows) besides a chariot should be given to the father of the bride." The unpublished Gṛihyasūtra of the Kaṭhaka School contains an interesting description of the ceremonies to be observed in contracting marriage by purchase. Strabon relates that, in India, the bridegroom gives α ζεῦγος βοῶν to the parents of the bride. This is precisely the Arsha wedding, which the Smṛiti writers have inserted among the laudable marriage rites, perhaps because it was a time-honoured practice and was less objectionable in their eyes than a money stipulation to the same effect. The Smṛitis are full of other indications of the frequency of marriage contracted by purchase.

The legal position of women.

A nation which tolerates this custom is not likely to regard the sex with special favour. To this it must be added that the ascetical tendency of the priestly lawyers has prevented them from treating the question of woman's rights in an impartial manner.[3] With the Indian Legislators it is not only an axiom that women are never fit for independence and have to be subject successively to the control of father, husband and sons, but their works con-

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[1] See Dr. Bühler's note on Vasishṭha I. 37. It has to be observed indeed that, in the passage of Vasishṭha, this text is interpreted differently by Dr. Bühler, as containing a prohibition of the purchase of a bride.

[2] See Dr. Bühler's note on Vasishṭha I. 36.

[3] What follows has been partly taken from the author's Paper on the Legal Position of Women in Ancient India (Journ. of the Nat. Ind. Assoc., 1877.)

The damsel.

tain a host of passages bearing on the necessity of keeping a strict watch over them, and on their alleged perverseness, lightness of morals, fondness of pleasure, etc., which is supposed to justify such treatment of the sex. The birth of a son redeems his father from hell; but the birth of a daughter is regarded with so much disfavour, that a woman who has been constantly bringing forth female children only is liable to be repudiated.[1] In the earliest times the exposition of daughters immediately after their birth appears to have been a very common practice, as it is recorded in the Veda.[2] About the condition of unmarried females the Smṛitis do not say much. This is no doubt because they were married at a tender age, without asking their consent, to a boy-husband, and were delivered to him by their parents on attaining puberty. The sin of the parents or guardians who fail to provide in time a bridegroom for a marriageable damsel, is visited with the most heavy punishments both in this world and hereafter. The parents, by acting thus, forfeit their right over her, and after the lapse of a certain period, she may proceed to choose a husband for herself,[3] or, according to another view, the next best man may take her in marriage without paying a nuptial gratuity to her father.[4] Which of these two views of the law is the correct one, it is hardly necessary to examine. It has been seen before that the Hindu Law, by establishing a whole series of Kanyāpradāh, or givers of a damsel, has taken care to provide that the case under notice could hardly ever arise. There are also a number of rules about eligible and ineligible wives, but the majority of these rules are in the nature of moral injunctions only. Absolute unfitness of a girl to be taken in marriage does not exist, although in certain cases, notably in cases of relationship within a prohibited degree, a marriage contracted by her with a particular person may be legally void.[5]

The wife.

The mutual duties of husband and wife constitute one of the eighteen topics of litigation; but from this it must not be inferred, that quarrels between them came as a rule within the cognizance of the Courts. On the contrary, they are expressly forbidden to bring any quarrel that may have arisen between them either before their relations or before the King.[1] Man and wife are designed as the two halves of a body,[2] and it is emphatically stated, that between them neither bailing, nor the contracting of a debt, nor bearing testimony for one another,[3] nor partition of property is allowed to take place.[4] This intimate character of the marriage union makes it very difficult for a woman to obtain redress for wrongs received from her husband. Moreover, the Smṛitis enjoin strict obedience to her lord as the first duty in a wife, and her absolute inferiority comes out in every way. Thus a wife is forced to submit to castigation by her husband, and even when he has been unfaithful to her, she must worship him like a God.[5] The wife on her part may be repudiated not only on account of adultery, but even on account of such light offences as unkind speeches, drunkenness, extravagance, as also on account of barrenness, sickliness or for bringing forth during a long period none but female children. The separation, it is true, need not be complete and lasting,[6] and even the adulteress has a claim to maintenance, though she must not be given more than is sufficient to preserve her from absolute starvation.[7] This claim ceases, when she has born a child to the adulterer.[8] Her crime is moreover punishable as a criminal offence by parading her on a donkey, and other heavy punishments extending to death. The religious penances ordained for the adultery of a wife are of an equally aggravated character.[9] Supersession is a special form of divorce, and appears to have been one of the most common forms of polygamy under the Hindu Law. In spite of the present which according to Yājnavalkya (II. 143, 148) and Vishṇu (XVII. 17) the husband was bound to make to his first wife on her supersession, the position of the superseded wife was far from enviable. Nārada, in speaking of a false witness, says, that he will have to spend the night in the same way, *i e.* sleepless as a superseded wife. Another form of polygamy is that in which the first married wife retains the highest rank, the other wives being hardly more than concubines and disabled from inheriting as well as from performing the daily ceremonies with their husbands.[1] As for the number of wives a man may have there is absolutely no limit.[2] The question as to the existence of polyandry in the Indian lawbooks will be discussed in connection with the Law of Adoption. Concubinage was considered as a lawful practice.[3]

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[1] Manu, IX, 81; Nārada, XII, 94.

[2] Taitthirīya Sanhitā, VI, 5, 10, 3; Kāṭhaka, XVII, 9. See also Nirukta, III, 4, where it is further stated that females may be given away, sold or abandoned.

[3] Manu, IX, 90-92; Yājn., I, 64; Vishṇu, XXIV, 40. This is the custom of Svayamvara, so well known from Indian fiction.

[4] Vishṇu, XXIV, 41; Manu, IX, 93.

[5] Dr. G. D. Banerjee, Lecture II; Kohler, Ind. Ehe-und Familienrecht, 20—33.

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[1] Nārada, XII, 89.
[2] Vyāsa, II, 13, 14, Bṛihaspati.
[3] Yājn., II, 52.
[4] Apast., II, 6, 14, 16.
[5] Manu, V, 154.
[6] Nārada, XII, 94 ; Manu, IX, 77-78.
[7] Nārada, XII, 91 ; Gaut., XXII, 35 ; Yājn., I, 70 ; Manu, XI, 177 ; Hārīta, Bṛihaspati.
[8] Parāçara, X, 30. "That degraded and sinful woman who has brought forth a child after adulterous intercourse, her husband being absent, or having been forsaken by her, or being dead, shall be left in another country (exiled)." Other offences for which a wife may be abandoned entirely or banished are mentioned, *e. g.*, by Manu (IX. 83), and Nārada (XII. 92).
[9] Vasishṭha, XXI, 1-9 ; Manu, VIII, 371 ; Gaut., XXIII, 14, etc.

The widow.

The iniquity of the Indian lawgivers towards women is nowhere manifested more clearly than in some of their rules about widowhood. After the death of her husband, says Vishṇu (XXV. 14), the wife must either preserve her chastity or ascend the pile after him ;—that is to say, she has the option of never marrying again and bearing all the hardships incidental on the degraded position of a widow, or of practising the atrocious custom of Satī, which has been the subject of so much horror among western nations.

References to Satī.

Vishṇu is the only old Smṛiti writer who mentions the custom of Satī. But it is also recommended by Parāçara (IV. 30, 31), Daksha (IV. 18), Vyāsa (II. 53), and in the lost Smritis of Bṛihaspati, Angiras, Hārīta and others. The antiquity of Satī is proved by the instances of Satī, which are reported by the Greek writers of antiquity, and by its being referred to in the Veda. It is true that the alleged authority for it in the Rigveda has turned out a forgery.[4] But a hymn in the Atharvaveda (XVIII. 3,1) refers, in somewhat obscure terms, it is true, to a widow who follows her dead husband into his heavenly abode, observing the ancient custom (Dharmampurāṇam anupālayantī).[1]

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[1] Vishṇu, XXVI. 1 ; Cankha in the Mitāksh, etc. As to remarriage with low-caste wives, see Manu ,III, 12-14, etc.

[2] Thus the 26th chapter of the Vishṇu-smṛiti contains a discussion of the order of precedence among many wives of one man.

[3] See *e. g.*, Nārada, XII, 78, 79 ; Yājnavalkya, II, 290.

[4] It has been argued that there is no reason for questioning the correctness of Raghunandana's reading of that text from the Rigveda, according to which the practice of Satī is inculcated in it. See Trailokyanath Mittra's Tagore Lectures, pp. 99—106. However, the statements of such a modern author as Raghunandana have no weight in settling a question of reading in the text of the Rigveda, which has been handed down unaltered from generation to generation for many centuries, and the authentic version of which is now universally accessible in several printed editions.

The position of women in Indian fiction.

The degraded position thus assigned to women in the Smṛitis presents a strange contrast with the charming and delicately delineated portraits of the heroines of the classical poets of India. But a close examination of the law-books shows that the Smṛitis themselves contain many traces of a different tendency in regard to the position of women, in which, as it were, the voice of the living law manifests itself. Take, for instance, the case of Satī. It has been said that the oldest law-books do not refer to this shocking practice at all. Some of those writers who do refer to it, notably Vishṇu and Bṛihaspati, advocate at the same time the widow's right to succeed to the property of her husband on failure of sons. Now this shows clearly that the self-immolation of widows, to say the least, was not meant as a universally binding precept by these writers. Even in regard to remarriage of widows, which is so strongly opposed to modern usage, there are in the Smṛitis numerous traces of a more liberal view of the law.[2] The ancient custom of Niyoga or appointment of a widow to raise offspring to her deceased husband affords evidence in the same direction. The truth about Satī appears to be this. The immolation of widows is an archaic institution, once spread over the whole world, and originating in the notion that a man, in order to feel happy in a future state, must have with him what he had cherished most in this life. In India, as everywhere, this custom was practised chiefly in the families of Kings and warlike Chiefs. The numerous memorials of Satī that have been found in India, especially in the Northern Provinces, relate mostly to the widows of Kshatriyas, seldom to the widows of Vaiçyas.[3] Before its abolition by the British Legislation, Satī was specially common among the Rajputs. The later Smṛiti writers,

The truth about satí.

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[1] See Zimmer, Altind. Leben, 331.

[2] See particularly Nārada, XII, 97; Parāçara, IV, 28; Manu, IX, 115, and the other texts regarding the son of a Punarbhū. These texts show that marriage with another than a virginwasnot considered as illegal, but that the offspring of such unions was not considered as equal to legitimate children.

[3] Bühler, MS.; Burnell, South Indian Palæogr. 2. ed., 120. The Digest writers are not agreed about the praiseworthiness of Satī. Thus it is highly extolled in the Mitāksharā (Achārādhyāya) and in Crīdharāchārya's Smṛityarthasāra, but the Smṛitichandrikā (Vyavahārakāṇḍa) declares the performance of Satī to be less meritorious than a chaste life.

while introducing Satī into the Brahmanical system, mitigated the harshness of this practice considerably by declaring its performance as optional and prohibiting it altogether in certain cases, such as that of a pregnant woman or the mother of an infant child. The position of the wife was considerably improved in the time of the later Smṛiti-writers by establishing the rule that no offence short of adultery was to be considered as a legal reason for abandoning a wife.[1] Even according to the earlier Smṛitis the right of divorce is not exclusively marital by any means.[2]

Proprietary rights.

Nothing, however, is better capable of illustrating the comparatively friendly disposition of Indian Customary Law towards the sex than the important proprietary rights which the Indian Jurists were successively forced to grant to women. The history of Strīdhana and of women's right to inherit and to a share on partition will have to be treated in detail hereafter. Though there is no genuine Vedic authority[3] for the general exclusion of women from inheritance, there is every reason to believe that their right of succession and to a share on partition has gradually developed from their claim to maintenance. Now-a-days even the right to be maintained out of the common estate is the only claim which the female members of an undivided family under Mitāksharā Law have on the family property, and the maintenance of the females and disqualified males constitutes one of the main charges on the family estate.

The Joint family.

The law regarding the male members of an Indian family naturally divides itself into two parts, according as the father or other common ancestor of its members is alive or not. In a half-patriarchal state of society, such as existed in the joint families of ancient India, the power of the father—head of a family—must naturally be very great. Accordingly we learn from the Smṛitis that a father might castigate, sell, cast off, give away

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[1] See the General Note to Jones's Manu.

[2] Vasishṭha XVII. 75—80 ; Manu IX. 74—76 ; Nārada XII. 96—100.

[3] Manu has also been quoted on the authority of Mitramiçra and Haradatta, as asserting the incapacity of women to inherit. See Mandlik. 367. But this is due to a false reading of M. IX. 18 (Adāyadāh or Hyādūyaçcha for Amantraçcha). The reading of the *textus receptus* is supported by the best MSS. and by the Commentaries of Medhātithi, Govindarāja, Nārayāna, Naṇḍanacharya and Raghavanāṇḍa.

Position of the Father.

and disinherit any of his sons at will, and that all acquisitions made by a son had to be given up to the father. The hereditary property may be disposed of at will by the head of the family (Gṛihī), and the sons cannot act for themselves either as regards worldly transactions or religious rites, and in particular, they have no independence in reference to the receipt and giving of property.[1] Death even does not put an end to the obligations of a son towards his father. He has to perform the customary Çrāddhas for him, and all legitimate debts contracted by the father are binding on his sons and grandsons. The position of a son under the Indian Law was, therefore, precisely the same as that of an unemancipated son under the earliest Roman Law. The Roman Jurists compare sons to slaves; nor is their state of dependence terminable except by the death or degradation of the father or by the solemn emancipation of the son. The Smṛitis declare that three persons—a wife, a son, and a slave—are incapable of holding any property, and that during the lifetime of his parents a son remains dependent and equal to a slave, though he be grown old.[2]

Position of the Mother.

The use of the term 'parents' in this text of Nārada implies that after the death of the father his power was to some extent delegated to the mother, and it is accordingly added by Nārada, that on failure of the father, the supreme dignity in the family belongs to the mother. Çankha observes that the sons do not possess independence while their father is living, and that this state of dependence continues as long as their mother is alive. It is true that the Commentator Aparārka, when quoting this text, adds that it relates to a mother, who is really capable of managing the family property. The mother certainly has a claim to be maintained by her sons in every case, even when she has been expelled from caste.[3] The metrical Smṛitis extend her proprietary rights much further than this, as will be seen from the Law of Partition and Inheritance. It would seem that during the life of the father also the mother was entitled to the receipt of at least the same share of respect from her sons as the Roman *materfamilias*. The mother is said to have power like the father to give, sell, and abandon a son ;[1] it is added, it is true, that she must not give or receive a son without her husband's permission. She is referred, together with the father and spiritual teacher, among the class of Atigurus, or specially venerable persons ;[2] and in other texts the mother is stated to surpass a thousand fathers.[3] These maxims have to be interpreted subject to the general rules about the inferiority of the sex. I am, however, informed on good authority that in modern India also the position of a mother is more dignified than that of other females. Analogous observations have been made among other archaic nations.

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[1] Manu VIII. 299; Vas. XV. 2; Manu VIII. 416; Nār. V. 39; Nār. I. 3. 36; Cankha and Hārīta.

[2] Manu VIII. 416; Nār. V. 39; Nār. I. 3, 32, 38, 39.

[3] Apast. I. 10, 28, 9-10; Baudh. II. 2, 3, 42.

Special dignity attaching to her.

Gradual restriction of the father's power.

Though the father's power is absolute in theory, its exercise has been early hemmed in by restrictions. It would have been unnatural to abandon a son otherwise than in cases of extreme necessity. Vishṇu and Manu go further than this, and declare it as punishable in any case if father and son were to forsake one another. Apastamba deliberately forbids the sale and purchase of children.[4] As after the death of the father the brothers were mutually liable for the performance of the Saṇskāras (Nār. XIII. 33), so in the father's lifetime this duty had to be regularly performed by himself. Altogether, the restrictions on the father's power occur chiefly in the more recent Smṛitis, just as the *patria potestas* under Roman Law was successively lessened. The attainment of majority on the completion of the sixteenth year[5] at first had no influence on the son's position towards his parents. Gradually, however, the grown-up sons acquired an influence on the administration of the family estate ; and thus we find it proclaimed by Vishṇu, Yājnavalkya and other

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[1] Vas. XV. 2—4.

[2] Vishṇu XXXI. 1, 2.

[3] Colebrooke. Dig. V. 8, ccccxxiv ; Manu II. 145.

[4] Vishṇu V. 113 ; Manu VIII. 389 ; Apast. II. 6, 13, 11-12.

[5] Nār. I. 3. 34. Bṛihaspati, in a text quoted by Aparārka and others, states that males attain majority in the sixteenth year. (*For the Sanskrit, see Appendix.*) This is ambiguous. But the phrase आ षोडशात् in the text of Nārada (I. 3, 32), on which the legal doctrine about majority is usually rested, has to be referred most probably to the completion of the sixteenth year. Similarly, आ पञ्चमात् (Vishṇu XXIV. 10, etc.) means up to the fifth degree (of relationship) inclusive. Some of the Bengal writers, however, take a different view of the matter, and make minority terminate at the beginning of the sixteenth year. The Gṛihaysūtras describe a ceremony called Godāna, which was to be performed on coming to man's state, in the sixteenth or eighteenth year.

LECTURE IV.

writers of the middle period of Indian Law[1] that in property inherited from the grandfather the sons possess an equal right with the father. In an anonymous metrical text a similar distinction as to the comparative right of the father and of the sons is made between the gems, pearls, corals and the like on the one hand, and the whole immovable estate on the other hand. Another text of doubtful origin states that immovables and bipeds, though acquired by the father himself, must not be given away or sold without convening all the sons, because those who are born, and even those who are yet unbegotten or in the womb, require means of subsistence. It is worthy of remark that the tendency to protect the property against dissipation has led to a restriction of the father's proprietary right over immovables, even in the cases of his own acquisitions. It would be a mistake, however, to interpret these texts literally. The sons might interfere where the father was about to give away his entire property to the Brahmans or to dissipate it. But the absence of their consent could not invalidate the gift or alienation, where it had been accomplished. And so we find it stated that even a single coparcener may give, mortgage or sell immovable property, where the family are in distress, or for a pious purpose.[2]

What was left of it.

In spite of all such inroads on the paternal authority, the position of the patriarch at the head of a joint family must have constantly remained one of great dignity, even in the middle period of Indian Law. Owing to the custom of early marriages, he might find himself a grandfather shortly after thirty, and a great-grandfather before fifty. All his grandsons and great-grandsons would stand in the same relation towards him as his sons; and their wives would be considered as equal to his daughters. Thus a daughter-in-law is expected to prostrate herself on the ground before her parents-in-law, who in return of this humble salutation may make her a present of Strīdhana (Pādavaṇḍanika, or Reverence Strīdhana). Nor were the junior family members likely to emancipate themselves from this patriarchal despotism by founding separate households. Even now-a-days it is the rule that married sons will rather bear with the inconvenience attaching to constant abode at their father's house than incur the expense and responsibility of a separate establishment.

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[1] Vishṇu XVII. 2; Yājnavalkya II. 121; Bṛihaspati, Vyāsa, Kātyāyana.

[2] Bṛihaspati in some works, an anonymous writer in others.

Right of Primogeniture.

But how after the death of the father? The motives for common residence of the family members would continue to operate as before, but who was to succeed to the dignity of patriarch? It appears that in early times the Law of Primogeniture used to prevail in that case. Several of the older Smritis[1] contain the rule that on the demise of the father, or of both parents, the right to the estate shall descend to the eldest son, protecting the rest like a father. According to Hārīta, the Law of Primogeniture obtains even in the lifetime of the father, if he is decayed,[2] absent on a journey or diseased. The extent of the eldest son's right is not clearly defined, but his authority was hardly inferior to that of the father. According to an opinion cited by Apastamba the eldest son is the heir. Hārīta and Çankhalikhita say that he shall manage the estate, and Manu forbids him to embezzle common property.[3] The traces in the Indian law-books of the special regard paid to seniors are indeed very numerous. Thus it is considered a heavy offence, if a younger brother were to marry before his elder brother, or a younger sister before her elder sister; a curious atonement for this offence is prescribed in the Dharmasūtra of Vasishṭha (XX. 7—10). Both the elder and younger brother shall do penance; and the younger brother shall afterwards offer his wife to the elder brother, who, however, must at once return her to be once more wedded to the junior brother. An analogous course of atonement is prescribed for the husband of a younger sister married before her elder sister. It is also considered as sinful in a younger brother to kindle the sacred fire before that ceremony has been performed by an elder brother. The various modes of unequal distribution of the estate, according to the relative age of the brothers, will be discussed in connection with the subject of inheritance. All elder relatives are entitled to respect and reverence from their junior relatives. A maternal grandfather, maternal and paternal uncles and other near relatives, together with their wives, are declared equally venerable as a spiritual teacher, who in his turn is held equal to a father.[1]

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[1] Gaut. XXVIII. 1. 3; Apast. II. 5. 6. 14. 6; Manu IX. 10. etc.

[2] Prodigal according to the reading of the Vivādatāṇḍava, etc. (Kāmadāne for Kāmamdīne.)

[3] Manu IX. 214.

Position of the manager.

Though this deep sense of the deference due to seniority pervades the Indian Law, the Right of Primogeniture is opposed by such an early author as Apastamba (II. 6, 14). Çankhalikhita says that when the father is disabled, the *management* of the estate shall be undertaken by the eldest son *or*, with his consent, by a younger son. Nārada (XIII. 5) declares that either the eldest brother shall become the head of the family, or even the youngest brother, if he is capable, because the property of a family depends on ability. This is good sense and corresponds to modern practice. It may be that some of the texts which I have quoted as relating to the power of an eldest son in general over the family estate have really to be referred to the eldest son in his capacity of manager. Nārāyaṇa, in commenting on Manu's prohibition (IX. 214) regarding an embezzlement of common property by the eldest brother, states that this applies to any one among the coparceners to whom the management of the family property has been entrusted. Nārada says that the manager shall be honoured by his brothers by presents of food, dress and vehicles. But this was a matter of favour, and not of right. The proprietary right of the manager stood not a whit higher than that of the other coparceners. He had, of course, a large discretionary power over the common income and expenditure. But to all coparceners alike applies the general maxim of Vyāsa, that a single coparcener has no power to sell, or give away coparcenary property, without the consent of the rest. This principle is, indeed, subject to the exception stated by Brihaspati, that necessity or a pious purpose justifies such alienations. As a rule every ordinary acquisition that has been made by a single member of the coparcenary, must be delivered into the common chest or purse. The charges on the estate, such as the maintenance of minors, females and disabled males, and the marriage expenses of the daughters or sons of any coparcener, are equally binding on all coparceners. The closeness of their union appears from the rule that between undivided brothers bearing testimony, bailing, bestowing gift and accepting presents is not allowed to take place.[1]

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[1] Vishṇu XXXII. 1—5; XXVIII. 38; Manu II. 206, 210, 130-131; Apastamba I. 4. 14. 11, etc.

Mode of enjoyment of common property.

It may be remarked, in conclusion, that the provisions of the Indian Law regarding the mode of enjoyment of common property are but scanty. This may be lamented from an European point of view, but it would have been unnatural in an Indian writer to lose many words about such an universal institution as the joint family, every body being familiar with it from his daily experience. The European student of Indian Law, who does not possess the same advantages, may make up for this deficiency by means of a careful study of the detailed rules on partition. Partition, says Aparārka, does not create a new right; it has but the effect to render visible the right of each of the former joint owners to his particular share of the estate.[2]

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[1] Nārada XIII. 39.

[2] (*For the Sanskrit, see Appendix.*) Com. on Yājn. II. 121.

LECTURE V.

THE EARLY LAW OF PARTITION.

Collective property — Relics of the old village communities in the Indian Law—The joint family and the coparcenary—Division of the subject—Partition formerly unknown — Immovable property — Naturally indivisible property — Bṛihaspati and Kátyáyana — The two classes of impartible property — Separate acquisitions in the Dharmasútras — Gains of science—Other separate acquisitions — Separate acquisitions of a son—Partible property — Right to demand a partition—Distribution of the property during the life of the father—Division after the father's death — Minority and absence — Case of pregnant widow — Mode of division—Arbitrary distribution by the father—Equal division — The son born after partition—Partition against the father's wish — Shares of collaterals — Females entitled to a share — The mother — Stepmothers and paternal grandmothers — The daughter — Charges on the estate — Evidence of partition — The kindling of the sacred fire — Circumstantial evidence — Hidden effects — Progress in the Law of Partition.

Collective property.

Relics of the old village communities in the Indian Law.

THE evolution of individual out of collective property has been a surprisingly slow process all over the world. Even in modern Europe the relics of corporate property are singularly abundant, as has been proved by the Researches of the Comparative School of Jurists.[1] The vast Continent of India may be said to exhibit an epitome of all possible forms of ownership, from the corporate property of the village community to the absolutely private property of the individual. In those parts of India where the Smṛitis were composed, the common enjoyment by the village community of pasture-ground for cattle appears to have been still in vogue,[2] but the arable land was already held in severalty. The owner of a field (Kshetrika, Kshetrin) is often referred to in the Smṛitis, and everything which is said about his position and rights,—*e. g.*, about his claim to damages for trespasses on his ground,[1] and about the decision of boundary disputes between two landowners,[2] shows him possessed of all the substantial attributes of independent ownership. Many estates were leased out, for half the crop, to farmers or riots (Ardhika or Ardhasīrin).[3] It is true that the Smṛitis refer to quarrels concerning the boundaries of two neighbouring villages.[4] But these quarrels may have related to pasture land, woods and the like, or else to private fields adjacent to the village boundaries. Each villager might claim the assistance of his co-villagers against an encroaching neighbour from another village. The corporate feeling among the members of a village community was very strong, and the village system has been justly pronounced to have been the basis of an Indian state. There exists also a trace of a right of pre-emption among the members of one village in a text[5] which declares the assent of townsmen, of kinsmen, of neighbours and of heirs as requisite for any transfer of landed property. In the time of the Commentators, however, this text had become entirely divested of meaning and was explained away by them.[6]

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[1] The works of Sir H. Maine are too well known to require mention. As for recent works on Comparative Jurisprudence, see a review by Professor Kohler in the Kritische Vierteljahrsschrift for 1880.

[2] Manu VIII. 237 ; Yajn. II. 166, 167. The ancient ceremony of Vṛishotsarga, which is described in the Vishṇu-Smṛiti LXXXVI. and in the Pāraskara, Cānkhāyana and Kāṭhaka Gṛihyasūtras, has been conjectured to refer originally to a bull who was kept for impregnating the village cows on the village common. See Professor Stenzler's note on Pārask. III. 9. Private pasture grounds were, however, in existence and are mentioned among the indivisible objects by Manu IX. 219 ; Vishṇu XVIII. 44 ; Kātyāyana and Bṛihaspati.

The joint-family and the coparcenary.

In Sanskrit Law, then, the lowest unit is the joint-family or rather the coparcenary. Two persons may live together in an undivided family, without being coparceners in the strict sense of the term. It will be seen from the Law of Inheritance, that the vested right to inherit does not extend beyond the great-grandson, the great-great-grandson coming in as a very remote heir only. The same rule applies to the Law of Partition. All members of a joint-family, who are removed more than three degrees from the common ancestor, have a claim to a share on partition. Originally, the right to a share would seem to have extended, like the right to inherit,[7] to the grandson only.

Division of the subject.

The rules regarding partition may be arranged under four heads: (1) the property to be divided; (2) the time of division and the right to demand it; (3) the mode of division and the charges on a divided estate; (4) evidence of partition.

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[1] Gaut. VII. 19; Manu VIII. 241; Yājn. II. 161; Vishṇu V. 146; Nārada XI. 29, etc.

[2] Manu VIII. 262; Yājn. II. 154; Nārada XI. 12, etc.

[3] Manu IV. 253; Yājn. I. 166; Vishṇu LVII. 16.

[4] Manu VIII. 245—261; Yājn. II. 1501—53; Nārada XI. 1—12; Vivāda-chint. 120—127, etc.

[5] Mitāksh. I. 1, 31, etc.

[6] In the Punjab the right of pre-emption is still in existence and recognized by Statute. See Mayne, § 210.

[7] See *post*, Lecture VIII.

Partition formerly unknown.

It has been seen in the last Lecture, that even after the death of the patriarch, head of a family, the division of the family property was not considered necessary nor even advisable in most families. The Smṛitis make it optional in the sons to remain united in that event or not. Separation, they say, tends to the increase of spiritual merit, because each separated coparcener has to perform religious acts, such as the worship of the Manes, Gods and Brahmans, by himself.[1]

In a joint-family, however large, the daily oblations, such as the Vaiçvadeva, as well as the great Çrauta sacrifices, used to be offered or paid for by the head of the family alone. This custom continues to obtain in the present day. It appears, however, that partition, though favoured by the priesthood, was even far less common in ancient times than it now is. An old author, Çankhalikhita, says the brothers may live together if they like, because being united they will prosper. Considering that there are even now many nations in the world, on which the idea of unrestricted private ownership has never dawned, it may be unhesitatingly set down as a fact that in the earliest period of Indian Law, partition of property was an entirely unknown proceeding. As regards immovable property, there is direct historical evidence to show that it was considered exempt from partition, long after the partition of other kinds of property had come to be an established practice. An anonymous text contains an absolute prohibition of the sale of immovable property, and in several of those enumerations of naturally indivisible property, which are to be found in the Smṛitis, land, houses and fields are expressly included. It is a well-known fact in legal history that the ancient custom of entailing the family estate, wherever it has been preserved, applies chiefly to immovable property. In the times of the later Smṛiti-writers even, when the divisibility of land had long since met with general recognition, the property in land was hemmed in by restrictions. Thus it is observed by Bṛihaspati that a single separate kinsman, like a single united one, can never mortgage or

Immovable property.

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[1] Manu IX. 111; Gaut. XXVIII. 4; Bṛihaspati, Vyāsa, Cākala, Prajāpati.

sell or alienate his landed property (without the consent of the rest.)[1]

Naturally indivisible property.

Other sorts of naturally indivisible property besides immovables, are the following: water, waterpots, channels, prepared food, clothes, ornaments, beds and seats, female slaves or kept mistresses of one family member, roads, vehicles or riding animals, books, the gains of sacrificing, and property destined for pious uses or sacrifices.[2] The variety of reading and of interpretation in the texts on indivisible property is extremely great.[3] I have followed those readings and interpretations, in drawing up the above list, which seem the most plausible ones and are best supported by authority. The uncertainty prevailing on this head is partly due to the ambiguity of some of the terms used in the old texts. But it is also probable that several of the articles in question had gradually ceased to be indivisible, whereas some fresh articles had to be added to the list, and that the tenour or the current interpretation of the texts was altered by those who wished to make them agree with the custom of their own time. Thus the text of Çankhalikhita, which declares the indivisibility of a house (Vāstu), was altered by one Commentator by introducing a new reading (Çhāsti) of this text, in which every reference to houses has disappeared.[4] Other Commentators got rid of this rule by explaining that it refers to a house used for religious purposes, or to a house constructed on the common estate by one of the co-heirs, during the father's lifetime; or to the forbidden delivery of immovable property to a son by a Kshatriya wife, or to a division of the value of a house, instead of a division of it in specie.[5] These evasive

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[1] The Sanskrit text in the Mitāksh. 174. Vīram. 103. Dāybh. 58. Raghunanḍ. 27, has Sapinḍāh 'kinsmen,' but the Mayūkha reads Dāyādāh 'coparceners.' The Mitāksharā (omitted in Colebrooke) refers this text to Manu, and the Bengal writers refer it to Vyāsa. There is also a difference of reading as to the clause *Nā Sarvatra*. 'never,' for which some Digests read *Na Sarvasya*, 'not the whole,' (landed property.) Colebrooke has translated the latter reading.

[2] Gaut. XXVIII. 46, 47; Manu IX. 219; Vishṇu XVIII. 44; Cankhalikhita, Vyāsa or Uçanas, Laugākshi, Prajāpati.

[3] Several curious readings and interpretations are to be met with in the unpublished Commentaries of the Manu-Smṛiti. Thus the Nandinī reads *Pātram*, 'a vessel,' for *Pattram*, 'a vehicle,' and explains the former term as denoting a waterpot.

[4] Kamalākara in the Vivādatāṇḍava.

[5] May. IV. 7, 21; Dāyabh. VI. 2. 30; Kamalākara. &c.

LECTURE V.

interpretations make it quite plain that in the time when the Commentators wrote the prohibition to divide a house had become a dead-letter. But the division of immovable property had grown into an established practice long before the epoch of the Commentators. It is only in the texts of Çankhalikhita, Uçanas, and Prajāpati on indivisible objects that immovable property makes its appearance. All the standard authors of the middle epoch of Indian Law, such as Yājnavalkya, Vishṇu, Kātyāyana, Bṛihaspati and others, frequently refer to immovable property in the law of division, without ever questioning its divisible nature. On the other hand, documents and books may serve as an instance of those species of property that were subsequently introduced into the rules about property exempt from partition. Manu, Vishṇu, and Uçanas mention '*pattra*' as an indivisible object. This term, according to the best Commentaries, denotes a vehicle or riding animal, and it is easy to explain, why vehicles were held exempt from partition. Simply because they were exclusively appropriated to the use of one family member, just like ornaments and other such articles of property. In a subsequent period, however, when the use of bonds and other writings had become very common, the term *pattra* was taken in its other sense of 'written document.' This is the meaning given to the term *pattra* by Kātyāyana and Bṛihaspati in their texts on indivisible property, and their opinion was adopted by some of the Commentators.[1] Similarly, the modern word *pustaka*, 'book,' which is probably of foreign origin, was introduced into the text of Vishṇu on indivisible property, which is otherwise identical with the analogous text of Manu.

Bṛihaspati and Kátyáyana.

The texts of Bṛihaspati and Kātyāyana on impartible property represent a far later phase of the law on this subject than any of the texts noticed before. The earlier texts, especially the text of Manu or Vishṇu, were evidently known to them. Bṛihaspati in particular, in his ample disquisition[2] on the subject of indivisible property, uses precisely the same terms as Manu, but in substance his opinion is exactly the reverse of that stated by the old lawgiver. He says plainly that those who have declared the indivisibility of clothes and other such articles, *i.e.*, of all the articles stated by Manu, have not decided properly. On the contrary, these articles, if indivisible in specie, shall either be sold and the produce divided, as valuable apparel and ornaments; or enjoyed by turns by the coparceners, as the labour of a single male or female slave, or the water of a well or pool; or recovered and then divided, as a written debt; or used jointly by all, as a pasture ground; or exchanged between the coparceners for other articles of equal value, as prepared food for an equal quantity of unprepared food. Property divisible in specie, such as embankments and fields, shall be divided in due shares. In short, all the objects deemed indivisible by their nature shall be divided with Yukti, *i.e.*, according to equity. Another text of Bṛihaspati contains the injunction that such clothes, ornaments, vehicles and the like as had been specially appropriated to the use of the father, should be delivered to him who partakes of his obsequial feast (Çrāddha). As for the three texts of Kātyāyana on the subject under notice, they will be found, by adopting a perfectly literal interpretation of them, to agree with the views of Bṛihaspati, who is expressly cited by Kātyāyana as an authority for his own statements. He first names a number of articles, which shall be enjoyed according to equity[1] by the former coparceners. Of this description are, property described in a deed, property assigned for pious purposes, water, slaves, a hereditary right or income (Nibaṇdha, Vattan), worn clothes and ornaments and the like. Then he goes on to mention several other species of property, which, according to Bṛihaspati, shall also be used (as before)[2] and not divided, *viz.*, a pasture ground for cows, a road, apparel worn on the body and implements of art.

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[1] Thus Aparārka, in commenting on the text of Manu (IX. 219), observes that the term (pattra) is by some explained as 'vehicle,' but that the text of Kātyāyana shows it must denote a document.

[2] This text has not been accurately rendered by Colebrooke (Dig. V. 5, ccclxvi), who has been followed by others. The correct translation has been given for the first time in Dr. Burnell's Mādhavīya, p. 52.

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[1] Thus according to Aparārka. For different translations of the term *yathākālam* in the text of Kātyāyana, see Colebrooke, *ibid.* V. 5, ccclxv, Mandlik, 72.

[2] प्रयोज्यम् which term the Bengal writers explain as denoting "what is fit for each person's use, as books for a learned man." They take this an independent kind of indivisible property. Kamalākara reads प्रमोद्यम् "What affords pleasure. such as a book; if it is of little value, it shall not be taken by unlettered persons; if it is valuable, it shall be sold and the produce divided.

The two classes of impartible property.

By the side of property indivisible from its nature, the Smṛitis enumerate and describe another set of articles exempt from partition, which possess a totally different character, though the two classes of indivisible objects are occasionally confounded. The naturally indivisible objects are a relic of the time when partition was unknown, and declined *pari passu* with the growth of private property, till in the middle period of Indian Law they had all become partible, except that some of these articles continued to be enjoyed jointly or alternately by the sharers. The other impartible objects on the contrary, *viz.*, separate or self-acquisitions (Svayamarjita), gained successively in importance, and were amongst the most powerful agencies for converting collective into private property.

Separate acquisitions in the Dharmasútras.

In the Dharmasūtras the law regarding separate acquisitions is seen in its first germs. Baudhāyana and Apastamba nowhere refer to such acquisitions, which seems to indicate that in the opinion of these two writers all acquisitions of a single coparcener had to be thrown into the common stock. Vasishṭha (XVII. 51) says that a brother, who has gained something by his own effort, shall take a double share only (eva) of his acquisition. According to Çankha, land formerly lost and recovered by one coparcener, shall be divided by all the co-heirs, but he shall take a fourth part in advance.

Gains of science.

No other special sort of separate acquisitions was noticed more early or discussed more fully than the gains of learning, *i.e.*, of sacred knowledge. Just as in the law regarding concerns among partners, the distribution of the sacrificial fees among a company of officiating priests occupies the most prominent place.[1]

In order to understand the rules of the Smṛitis on this head it must be remembered that the young Hindus of old, much as the college students of the present day, used to go abroad in order to enjoy the instruction of a renowned teacher. About the mode in which scientific requirements and skill in sacred lore was turned to account for the acquisition of wealth, we possess some interesting statements of Kātyāyana. Thus he mentions as the gains of science, fees received from a pupil or for the performance of a sacrifice (which latter acquisitions are independently mentioned as sacrificial gain by others[1]), a reward or prize obtained for recitation of the Veda, or for superiority in a disputation, or for determining a knotty point of law, etc. It is important to notice that Kātyāyana includes the acquisitions of an artist or artizan (Silpin) in the gains of science. Acquisitions of this kind no doubt had not been originally contemplated by the priestly lawyers. The fact of their recognition illustrates the growing tendency of popular opinion to secure for each family member the results of his own aptitude for work of a particular kind and to favour the growth of private property.

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[1] Manu VIII. 206—211.

Other separate acquisitions.

The same tendency is manifested more clearly still in the addition of several other kinds of separate acquisitions to the gains of science. The metrical Smṛitis refer to the following kinds of separate acquisitions: the gains of science and of valour, gifts received from the father or mother or paternal grandfather, or from a brother, or a friend, wedding gifts, presents received at the solemn reception of a guest (Mādhuparkika), sacrificial fees and Strīdhana. It will be observed that among the divers kinds of gifts here specified, gifts received from entire strangers are not included, and that therefore such gifts are partible. Similarly, in the Law of Strīdhana, gifts received from a stranger are not included in the denomination of Strīdhana. Acquisitions by valour are defined by Kātyāyana as consisting of booty made in a dangerous combat, or of the reward obtained from a lord or military chief for a gallant action performed in war. As regards property lost and recovered, of which, according to Çankha, the recoverer shall only take one-fourth as his preferential share, the later Smṛitis ordain that the recoverer shall take it entire; for, say Manu (IX. 209), and Vishṇu (XVIII. 43), it was gained by his individual exertion. And all the later writers hold that whatever has been acquired by the individual effort of a single member, without prejudice to the family estate, shall not be given up by him to his co-heirs.[2] The early rule, stated by Vasishṭha, which gave the acquirer a right to a double share only of his self-acquisition was explained away in various ways. Thus it was stated by Vyāsa that property acquired by valour or any of the other (modes of separate acquisition), was to be divisible, in case the family property had anyhow been turned to account in its acquisition, be it only by using a common vehicle or weapon.[1] In such cases, however, the acquirer would be entitled to a double share. Kātyāyana restricts the double share of the acquirer to the case of reunited coparceners, which was practically of rare occurrence.

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[1] A guest had to be honoured by offering him the Mādhuparka (honey mixture), and other gifts. The rules regarding the solemn reception of a guest are to be found in the Pāraskara Gṛihyasūtra I. 3. and other Gṛihyasūtras. Those persons who have a claim to such reception are, a King, an officiating priest, an absolved student (Snātaka), a spiritual teacher, a friend, a father-in-law, a son-in-law and a maternal uncle. See Manu III. 119; Yājn. I. 110; Pārask. *ibid.* etc. Rāghavānaṇḍa gives silver vessels as an instance of the presents offered to a guest (gloss on Manu IX. 206).

[2] Manu IX. 208; Vishṇu XVIII. 42; Yājn. II. 118; Vyāsa, Kātyāyana.

Separate acquisitions of a son.

It is a singular circumstance that where the person by whom a separate acquisition has been made is expressly referred to in the Smṛitis, it is generally either the father or one of several brothers. From this it might be inferred that the Smṛiti-writers did not contemplate independent acquisitions of a son in the lifetime of his father. There exists, however, a text of Kātyāyana relative to the acquisitions of a son, under which the father is entitled to a double share or to one-half of such acquisitions. This text seems intended to mitigate the harshness of the early law regarding the acquisitions of a son, which directed their junction with the common family property.[2] Probably the right of the sons to a *peculium* came to be recognized very early. It would have been strange, for example, if a donation once made by a father could have been resumed by him according to pleasure.

Partible property.

It was necessary to discuss the doctrine regarding impartible property with some fulness, because it affords the only safe basis for determining the nature and extent of joint property. All that property is joint which is not expressly mentioned as indivisible. Kātyāyana seems to lay down the law with greater generality. He says that all property shall be divided which was either acquired by the grandfather, or by the father, or by one of the co-heirs himself. But this rule has to be qualified, no doubt, by the special laws regarding the indivisibility of separate acquisitions of a co-heir, which are so elaborately stated by Kātyāyana himself. On the other hand, it must not be thought that, according to the metrical Smṛitis, all acquisitions of a single member are indivisible. On the contrary, they are very explicit in their statements about the collective nature of such property as has been acquired by the common exertion of all the family members,[1] or by a single coparcener with the aid of joint funds or common implements of husbandry or art. It follows from the very nature of the joint-family system that every ordinary acquisition becomes joint, no matter how much or how little each individual member of the family may have contributed to its being made. Supposing one coparcener to have exerted himself far more than the others in the cultivation of the family estate. Still the oxen and the plough and the field would be joint property, and the produce of his labour must needs be joint as well. As to property inherited from an ancestor, its joint nature, of course, cannot be called into doubt in any case, and this is why the Smṛitis are so careful to distinguish between ancestral property and fresh acquisitions both in the Law of Alienation and Partition.

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[1] For Vāhanāyudham, "a vehicle or a weapon," some Digests read Vāhanādikam, "vehicles, etc."

[2] Manu VIII. 416.

Right to demand a partition.

This distinction comes out in a very marked way in the second and third parts of my subject, *viz.*, the rules regarding the time and mode of partition. It is obvious that partition in order to become a common and established practice, presupposes the existence of a right to demand it on the part of every one of those who are likely to be benefited by it. The absence of such a right as this in the earliest period of the Hindu Law is among the clearest proofs of the general prevalence of the joint-family system in that period. No other single family member than the father was allowed to institute a partition on his own account, and whether he would exercise this right or not depended entirely on his discretion. The female family members could never demand a partition. The sons might divide the property after his death by mutual consent, but not at the instance of one single coparcener. Where the welfare and prosperity of the joint-family was endangered by the unwillingness of a lazy member to work, he was liable to be turned out of the coparcenary, after giving him a mere trifle instead of his full share.[2] Where on the contrary a specially able member wished to ensure the fruits of his skill and industry to himself by beginning life on his own account, he was not, it appears, free to demand a partition, and his interests, unless he chose to sever himself entirely from the family without asking for a share, were not protected otherwise than by the laws regarding separate acquisitions.

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[1] Manu X. 215 ; Yājn. II. 120.

[2] Manu IX. 207 ; Yājn. II. 116. These texts have three interpretations : 1, they relate to a coparcener who is able to subsist by his own labour and does not desire a share ; 2, they relate to one able but unwilling to do work (Prakāça) ; 3, they relate to both classes of persons (Aparārka). Though

Distribution of the property during the life of the father.

The distribution of the family property by the father appears to be a very ancient practice in India, as it is recorded in the Veda.[1] It was a natural exercise of the *patria potestas*, and is found almost wherever the right to make a will is wanting, which is so characteristic an attribute of the power of a *paterfamilias* under Roman Law. Apastamba (II. 6, 14 i) mentions no other kind of partition than that which is made by the father. From the distribution of the estate by the father it is necessary to distinguish another kind of partition, which, though taking place equally in the lifetime of the father, was not instituted by himself, but by the sons. This division by the sons is again twofold with or without his consent. Partition with the father's consent or concurrence might be undertaken by the sons, when the mother was past childbearing and the carnal desires of the father were extinguished and the daughters were married.[2] Most Smṛiti-writers declare the father's assent to be absolutely necessary to partition, and Çankhalikhita goes the length of absolutely forbidding a partition made in his lifetime by the sons even of wealth subsequently acquired (by themselves). There is one important passage, variously attributed to Çankha, Çankhalikhita and Hārīta, which declares the estate to be partible by the sons, where the father is stricken in years, perverted in mind or incurably ill. This is the more ordinary reading of this passage, but it must be owned that according to another reading it means the very reverse, *viz.*, that even in such cases the estate must not be divided against the father's will.[3] An analogous

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the great majority of the Indian Commentators have adopted the first interpretation, I have decided in favour of the second, because it would be absurd to speak of the bestowal of "a trifle, sufficient to preserve him from starvation" on one able to subsist by his own labour, and because the root īh is not likely to be used in a different sense—in Manu IX. 207 than in 209, where it means exerting one's-self.

[1] Taittirīya Saṇhīta III. 1, 9, 4.

[2] Nārada XIII. 3.

[3] The former reading is found in the Mitāksharā. Mayūkha, Smṛitichandrikā, Vivadatāṇḍavā, Vīramitrodaya, Aparārka, Vaijayantī, and other

text of Nārada (XIII. 16) ordains that a father may forfeit his power in the distribution of his estate through illness, wrath, absorption in worldly desires or transgression of the law (*i. e.*, probably of the ordinary rules regarding partition). Devala says conversely that the sons have no power over the paternal estate while the father is alive and free from defect. The texts of Yājnavalkya and others regarding the equal ownership of father and sons in ancestral property can hardly be meant to confer on the latter a claim to demand the division of such property at any time. The Dharmasūtra of Gautama, while declaring in one place (XXVIII. 2) the assent of the father as absolutely necessary to a partition by the sons, refers in another place (XV. 19) to sons who have enforced a division of the family estate against their father's wish. Such sons shall be excluded from funeral repasts, which shows that division against the father's wish, though not precisely illegal, was reputed *contra bonos mores*. This appears to have been the true feeling in the Smriti epoch about a partition enforced by the sons, and this feeling continued to subsist in spite of the important rights that were gradually accorded to the sons over ancestral property.

Division after the father's death.

The most common period for instituting a partition appears to have been the time shortly after the father's demise. Division of the estate was the surest method for obviating all quarrels which might arise in that event in regard to the management of the estates and the share of profit accruing from it to each member of the coparcenary. In some texts the mother's death is added to the demise of the father as a necessary antecedent to partition. But the importance of these texts, which moreover are contradicted by a passage of the Sangraha, must not be over-rated. Supposing they refer to the management of the estate by the mother during the minority of the sons. In that case they would tend to confirm the rule of Hārīta (quoted by Aparārka) that partition must not take place till all the brothers have attained majority. Baudhāyana speaks of the custody over the shares of minors, which seems to imply that a legal partition might be instituted even

Minority and absence.

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works. The latter reading, with the particle nā, 'not,' occurs in the Dāyabhāga 41, Raghunandana 31, and other works, chiefly of the Bengal School. The previously quoted text, provided that it is really taken from the same work, would rather speak in favor of the correctness of the Bengal reading.

during the minority of some of the coparceners. There is also a text of Kātyāyana to the effect that partition shall come when all the brothers have attained majority, but the same writer in another text ordains that the wealth of minors and absent coparceners shall be deposited free from disbursement with relatives and friends. This appears to be the modern opinion about this matter, and similarly Brihaspati refers to partition in the absence of one coparcener as to a legal proceeding. It may be observed here that the rights of minors were further protected by the rule which vests guardianship in the sovereign.[1] Another limitation of the right of brothers to come to a partition is stated by Vasishṭha, who says (XVII. 41) that it shall be delayed until the delivery of those (widows) who have no offspring but are supposed to be pregnant. No other Smṛiti contains a similar rule, and the pregnant allusions of the other Smṛiti-writers to the son born after partition, seem to imply that they did not consider the existence of a pregnant widow as a bar to partition.

Case of pregnant widow.

Arbitrary distribution by the father.

The *mode of division* has to be treated next. In a division instituted by the father himself, the early Indian Law did not place any restriction on the discretionary power of the father in the distribution of his state. According to an old writer (Hārīta), he was at liberty to retain the greater part of his wealth for himself, and might even take back under pressure of distress what he had given to his sons. Such a modern author as Brihaspati ordains that the sons shall be content with such allotments as their father has given to them, whether great or small, because the father has power over the entire property, and the prohibition levelled by the same author against arbitrary preference shown to one son over another is in the nature of an advice or moral injunction rather than of a law. The same proposition is contained in the analogous texts of Nārada (XIII. 15) and Yājnavalkya

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[1] Vasishṭha XVI. 7; Gaut. X. 48; Manu VIII. 27; Vishṇu III. 65. The Indian Commentators are not agreed about the interpretation of this rule: Thus Govindarāja and Kallūka (on Manu l. c.) declare the protection of heirs against covetous relatives as its true object; but Medhātithi observes that the relatives of a minor may institute a law-suit against the King, in case he fails to preserve carefully the property of minors, which is in his keeping. In practice. both cases may have been of common occurrence. It seems very natural in particular that an encroaching prince should have abused frequently of the minority of the heir-apparent of a feudal baronetcy or other large estate in order to get possession of it himself.

(II. 116).[1] Though under no legal restraint, he might find himself checked to some extent by custom in disposing of his property, especially in early times by the Law of Primogeniture. Even Apastamba, though opposed otherwise to the Law of Primogeniture, says that the father in dividing his property shall gladden the eldest son with some choice portion of his wealth (II. 6, 13, 13). All Smṛitis mention one or several modes of distribution according to seniority. They also ordain a decrease in the shares for those sons who are born of a mother—belonging to a lower caste than the other sons. The Law of Primogeniture and mixed marriages between different castes have gradually passed away. A new distinction was introduced in regard to the property to be divided. The importance in the Law of Partition of the distinction between ancestral and self-acquired property appears clearly from the Vishṇu-Smṛitis (XVII. 1, 2). This work contrasts self-acquired property, which a father may distribute according to pleasure among his sons, with ancestral property, over which his right is not greater than that of the sons. This means apparently that where such property is divided, the mode of division has to be determined by the father and sons in concert. An equal distribution of the whole estate among the sons is mentioned as one alternative in all Smṛitis, including the earliest works, and there has always been a strong leaning towards this mode of division. It is energetically advocated by Apastamba, and there is an important text of Kātyāyana to the effect, that a legal partition is effected by the parents and sons taking the whole estate in equal shares. Little is to be found elsewhere about the amount of property to be retained by the father in this or indeed in any case. Nārada (XIII. 12) and Bṛihaspati say that a father when distributing his property may retain two shares for himself. Hārīta in one place restricts the applicability of this rule to the case of a father having an only son. The other text of Hārīta, which authorizes the father to retain the greater part of his wealth for himself,

Equal division.

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[1] (*For the Sanskrit, see Appendix.*) "If they have received less or greater allotments from their father, it is the law, because it has been so arranged by the father. They cannot demur to it at a subsequent time." Cūlapāṇi. Aparārka has the same interpretation, but he says expressly, that this relates to self-acquired property only. The Mitāksharā takes the epithet Dharmya as denoting that a partition, *if just*, is valid. See however Yājn. II. 114.

has been quoted before. Apastamba speaks of the chariot and the furniture in the house as being the father's share; but the reading of this Sūtra is not free from doubt. In order to explain the absolute silence of the other Smṛitis it might be argued that the father's absolute power in the distribution of his property implies *à fortiori* an equally absolute right to withhold any part of it from partition. But this explanation cannot apply to those works which draw the distinction between ancestral and self-acquired property. The true solution of the difficulty has to be sought in the fact that under the Law of the Smṛitis every member of the higher caste was to retire into a forest or to become an ascetic in his old age after having relinquished his property. In the Law of Inheritance, the entrance of the father into a religious order is therefore placed on a par with his demise. In reality, those who, conformably to this rule, retired from worldly concerns in their old age were but few in number. Hārīta makes it optional in the father to retire from the world or to remain at home and give part of his property to his sons. Several Smṛitis contain the rule that a son born after partition shall receive the property of his father only, which shows clearly that the father in making the partition was to retain property for himself.[1] It may be observed in this place that the law regarding the son born after partition is differently stated in other works. They prescribe[2] that he shall receive a share, *i. e.*, that the partition shall be opened up again on his account.

The son born after partition.

Partition against the father's wish.

What the claim of the father amounted to in those cases where a partition had been instituted against his will, on account of his dotage, illness, etc., it is not easy to say. Perhaps he had merely a claim to maintenance in such cases, and certainly he could not claim more than a son's share.

Shares of collaterals.

In a division after the father's death the claimant of arbitrary power on the part of one particular family member is absent; and the mode of partition is entirely determined by custom. Unequal division, therefore, could only obtain in early times under the Law of Primogeniture, and in the case of sons springing from mothers of different castes. Two institutions will have to be discussed in connection with inheritance, and it will be seen that in course of time none but equal divisions come to be considered as legal. Among the common descendants of one ancestor the division is *per stirpes*. How far the Law of Representative extends, will be seen further on.

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[1] Manu X. 216; Nārada XIII. 44; Gaut. XXVIII. 29; Bṛihaspati. Nārāyaṇa, in commenting on M. IX. 216, observes (*for the Sanskrit, see Appendix*): "This rule shows that the father also is to take a share at a division of the estate."

[2] Vishṇu XVII. 3; Yājn. II. 122.

Females entitled to a share. The mother.

The female members of a joint-family, though they can never demand a partition for themselves, and have, generally speaking, a right to maintenance alone, may claim a share of the property in certain cases. This right, however, did not belong to them originally, and it is not recognized in any of the old Dharmasūtras. Apastamba (II. 6, 14. 9) mentions with disapproval the rule that the wife at a partition should keep her ornaments and gifts received from relations. Vishṇu, however (XVIII. 34, 35), speaks of the shares of a mother and maiden daughter. Yājnavalkya says that in a division after the father's death, the mother shall receive a son's share, and he lays down the same rule in the case of a division in the father's lifetime, provided that it is an equal division, and that the wives have not received Strīdhana, *i. e.*, property sufficient for their maintenance from the husband or father-in-law; if they have, they can only claim half a share of the property. Another Smṛiti states generally, that a wealthless mother should receive an equal share. An analogous rule is equally given by Nārada in reference to partition after the father's death (XIII. 12), and it may be that the double share which he assigns to the father in a division during his lifetime has a sufficient provision for the mother for its true object. According to a modern writer (Vyāsa), the stepmothers and the paternal grandmothers shall also receive a share each. These rules are in accordance with the special consideration showed to mothers and grandmothers in the Indian Law.

Step-mothers and paternal grand-mothers. The daughter.

The rules regarding the shares of unmarried daughters relate exclusively to the case of partition after the father's death. Thus it is ordained by Manu (IX. 118), Bṛihaspati and Kātyāyana that the sisters shall receive a quarter of a share from their brothers; and Yājnavalkya (II. 124) gives the same rule, adding that her marriage expenses shall be defrayed out of such property. Devala ordains generally that the daughters shall receive a marriage portion from the paternal wealth. Vishṇu (XV. 31) directs that they shall be married by their brothers in

Lecture V.

a manner correspondent with the amount of the paternal property. Çankha says that on a division of the estate a maiden daughter shall receive ornaments, and Strīdhana for her nuptials. As before division the obligation to marry maiden sisters and other unmarried females was among the principal charges on the estate, it was but natural that a certain amount should have been set apart for that purpose when the estate was divided. It deserves to be noticed that the rule regarding the fourth share does not make its appearance before the period of the metrical Smriti. Some of these works go much further than this. Nārada (XIII. 13) makes her right equal to that of a younger son, when the father distributes the estate. Kātyāyana awards a son's share to the maiden daughter when the estate is very small. But during the life of the father the provision to be made for the daughter continued to be left entirely to his discretion, and the wives and daughters of disqualified heirs and deceased coparceners have never advanced beyond a claim to be maintained or provided for in marriage by the co-heirs.[1]

Charges on the estate.

The charges on the estate, such as the expenses incurred for the maintenance of females, minors, etc., and the debts, must be distributed among the sharers in due proportion. The leading text on this subject is one of Yājnavalkya (II. 117). It is true that the debts only are referred in this text; but there is no reason why the other charges on the estate should be treated on a different footing.

Evidence of partition.

Considering the immense importance of partition for the legal and social status of each member of an Indian family, it cannot but seem surprising that the Hindu Law does not direct the performance of any of those solemn rites on this occasion with which it is so lavish otherwise.

The kindling of the sacred fire.

Yet the only trace of a ceremony having taken place at the time of division is to be found in the injunction of the Smriti,[2] that the sacred fire, in which each householder had to offer the domestic oblations, may be kindled on the division of the family estate. The kindling of the sacred fire was no doubt considered as one of the most sacred and important ceremonies, but it appears that the more usual occasions for its performance were the marriage of the future householder, and the demise of the previous head of the family.[1] Nor is the kindling of the sacred fire ever mentioned as necessary to constitute a valid, or as evidence of a contested, partition. Written documents recording a division of patrimony are mentioned and described in the modern Smṛiti of Bṛihaspati, in a list of the divers sorts of writings. He says that where brothers of their own accord come to a division of their joint-estate and record this fact in a document, it is called a deed of division. This does not prove of course that a written deed was necessary to constitute a partition.

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[1] Yājn. II. 141 ; Nārada XII. 27.

[2] Gaut. V. 8 ; Cāṅkhāyana, Gṛihysūtra I. 1 ; Medhātithi seems to allude to a ceremony consisting of kneading a yellow ball at the division of the estate. But his terms are not very clear.

Circumstantial evidence.

Under these circumstances, the question whether an estate was divided or not could not but become a frequent subject for contention, as soon as partition itself had been come to be an established practice. The evidence to be resorted to in such cases is discussed with more or less detail in several of the metrical Smṛitis, such as the works of Yājnavalkya (II. 149,) Nārada (XIII. 36—42), Bṛihaspati and the metrical Smṛiti of Çankha. The following kinds of evidence are mentioned in these works, each preceding kind being apparently considered as weightier than the one following next: 1, witnesses, especially near relatives; on failure of such, distant relatives or neighbours (bandhu, kula); 2, documents; 3, the separate holding of property, especially of immovable property, and the separate transaction of affairs, both secular and religious. As for the separate performance of religious ceremonies, it will be remembered that the religious rites have to be performed by the head of the family for all the members, and that the multiplication of the ceremonies produced by a division is stated as a reason why division is meritorious from a religious point of view. The way in which separate transactions in mundane matters may be used as a test of partition is carefully examined by Nārada and Bṛihaspati. These writers refer in particular to separation in income and expenditure, gift and acceptance of gift, and to separate meals, as well as to the mutual performance of such transactions as are not allowed to take place between the members of a joint-family, as *e.g.*, bearing testimony, bailing, and pecuniary transactions of any kind. It is in short by circumstantial evidence or inference (anumāna) that the fact of partition, has to be ascertained. Brihaspati compares a division in this respect to the contested ownership of immovable property and to an enquiry about the perpetrator of a heavy criminal offence. Nārada adds a limitation as to time to his rules about the separate transaction of affairs, *viz.*, this, that such transactions must have gone on for ten years to constitute reliable evidence of partition. Where the examination of circumstantial evidence leads to no result, some of the later Jurists prescribe the application of a divine test, *i.e.*, of a solemn oath or ordeal, under a text of Nārada. It has, however, to be observed that this rule of Nārada applies to the Law of Evidence in General, and that there is little to connect it with the special case of a contested partition.

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[1] Gaut. V. 8; Manu IV. 67; Vishṇu LIX. 1.

Hidden effects.

The administration of an ordeal, *viz.*, of the ordeal by sacred libation,[1] is distinctly prescribed by Kātyāyana in the case of effects concealed or supposed to have been concealed by one of the coparceners at a partition. Where such articles or, generally speaking, property embezzled by one coparcener, or overlooked at the time of partition, should have actually been discovered, or where lost property has been recovered, it shall be equally divided by the co-heirs.[2] One of Manu's Commentators (Nārāyaṇa) declares the purport of this rule (IX. 218) to be this, that those guilty of such embezzlement shall not be punished by the loss of their share at the time of partition. To cheat his younger brothers from avarice is certainly declared as a criminal offence in an elder brother, and as punishable, moreover, by the forfeiture of his Right of Primogeniture and of his share.[3] This harsh law appears to have been mitigated in the time of Brihaspati and Kātyāyana. What has been divided wrongly or erroneously shall be subjected to a fresh division.

Progress in the Law of Partition.

Altogether it is an unmistakable fact that the Law of Partition is seen in an infinitely more developed state in some of the modern Smritis than in the old Dharmasūtras. In the next Lecture I intend to show how partition has gone on developing in the modern period of the Indian Law.

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[1] See Nārada, Part I, Ch. ix.

[2] Manu IX. 218 ; Yājn. II. 126 ; Kātyāyana. Another text attributed to Manu ordains partition to be re-opened, whenever a common property is brought to light after partition. But this text is not found in the Code of Manu, and is contradicted by the rule actually found in that work that division is once for all and irrevocable (IX. 47).

[3] Manu IX. 213.

LECTURE VI.

THE MODERN LAW OF PARTITION.

Scope of this Lecture—Nature of property—Origin of the Dáyabhága Law—Early disquisitions on proprietary right — The Mitákshará doctrine — The father's power over ancestral movables and self-acquired land — Gifts of movables by the father—Apparent contradictions — The father's power of alienation under the Dáyabhága — Universality of the doctrine of *Factum valet* — Jímútaváhana's views regarding alienation are not peculiar to him — Various readings — Naturally indivisible property — Separate acquisitions — Mitákshará doctrine — Double share of the acquirer according to the Dáyabhága — Acquisitions of a son — The Mitákshará doctrine regarding divisible property — The later Digests of the Mitákshará School — Mayúkha — Vívádatandava — Víramitrodaya — Madanapárijáta — Smṛitichandriká — Sarasvativilása — Property inherited from collaterals — Ancestral property recovered — Vivádachintámaṇi — Time of partition according to the Dáyabhága; according to the Mitákshará — Character of the Mitákshará doctrine — The other writers of the Southern School — Benares School — Mayúkha — The Mithilá doctrine — Partition during minority of a coparcener — Mode of division according to the Dáyabhága — Character of this system — The Mitákshará system — The double share to be retained by the father — The son born after partition — Caste distinctions — Rights of females — Where no assets — Division of liabilities, partial division, and division of profits — Rights of women on partition under Mitákshará Law — The widow under the Smṛitichandriká; under the Víramitrodaya, etc. — Where she possesses Strídhana — Question as to share of the step-mother, etc. — The fourth share of a daughter — Definition of the term "a fourth part" — Rights of women in Bengal — Evidence of partition — Concealed property—Supposed forfeiture of share by an elder brother cheating his younger brothers.

Scope of this Lecture.

The modern Law of Partition is a subject of such vast extent and importance that it is entirely out of the question to treat it fully within the scope of this course of Lectures. It will be sufficient to point out the more important changes which have been introduced into the old Law of Partition by the conflicting Schools of Indian Commentators, and to show how they have arrived at deducing their new rules from the old texts.

Nature of property.

An entirely new element has been introduced by the modern Jurists in the shape of those curious disquisitions about the nature of property and inheritance with which they are in the habit of prefacing their Treatises on Inheritance.[1] Some of these disquisitions might seem to centre in the abstruse question whether property is a sacred or profane institution, and they are closely connected, no doubt, with the Mīmāmsā dissertations about property.[2] At the same time, they have a direct bearing on the solution of such an eminently practical question as the determination of the relative power of father and sons in property ancestral, in other words, the extent of the *patria potestas* as far as proprietary right is concerned. Those who hold that property is by birth, infer from this that the sons can demand a partition of ancestral property in the father's lifetime. Those who hold that the proprietary right of the sons does not arise till after the father's demise, deny their right to demand a partition during the life of the father. The former doctrine is generally known as the Mitākshara Law, and the latter as the Dāyabhāga Law, and the author of the latter work has been sometimes regarded in the light of a bold reformer, who set up the actual usage of his own time against the letter of an obsolete law. However, the gist of Jīmūtavāhana's doctrines on this head is far older than himself and agrees to a considerable extent with those views of the nature and origin of property which are so elaborately refuted in the Mitāksharā, Smritichandrikā and other old Digests. The immense importance of this subject for the Law of Alienation and Partition will justify my dwelling on it a little longer. Unfortunately the loss of those numerous old Digests which are known from quotations only makes it impossible to trace with anything like certainty the growth and origin of the various shades of doctrine about the nature of property and inheritance, which are embodied in the Digests from the Mitāksharā downwards. There is still a chance of some of these works being ultimately recovered and becoming accessible to Sanskrit scholars. In the mean time, I would submit the following solution of the problem.

Origin of the Dáyabhága Law.

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[1] Sometimes the Section on the nature of property is brought in elsewhere. This is notably the case in Aparārka's Commentary on Yājnavalkya, where it occurs in the comment on Yājnavalkya's rule (II, 12, i); about the equal right of father and sons in property ancestral, and in the Sarasvatīvilāsa, where it heads the Section on Obstructed Inheritance. From some other works, such as the Madanapārijāta and Vivādachintāmaṇi, it has been omitted altogether.

[2] See Jaimini's Aphorisms of the Mīmāmsā, Vol. I, pp. 435—438 (in the Bibl. Indica).

Early disquisitions on proprietary right.

Though the question as to the nature of property does not seem to have been raised in the Smṛiti period, the modes of acquisition, lawful or otherwise, fit for all castes or restricted to one particular caste, were a favourite topic with the Smṛiti-writers.[1] It was natural to ask, therefore, whether the modes of acquisition recognized by the earliest writers, were the only ones, or whether proprietary right might arise in some other way as well. This question came to be discussed towards the end of the Smṛiti period by the author of the Smṛitisaṇgraha and was answered by him in the negative. If mere possession were to create proprietary right, he says, theft would have to be viewed as a source of property. Therefore property cannot arise in any other than those modes which are stated in the law (Çāstra). The Smṛitisaṇgraha is also quoted as an authority for the proposition that the proprietary right of the sons does not exist during the life of their father, and arises for the first time at a division of the estate.[2] Precisely the same views are attributed to one of the earliest Commentators, King Bhoja of Dhārā (Dhāreçvara).

The close analogy of these doctrines with the Dāyabhāga system is obvious. Moreover, the Dāyabhāga (II. 15) quotes with approval Dhāreçvara's restrictive interpretation of the important text of Yājnavalkya on the equal ownership of father and son.[3] These facts tend to show that the views of Jīmūtavāhana were neither peculiar to himself nor to the Bengal School of Lawyers. It has been pointed out in the two last Lectures that a high opinion of the proprietary right of a father and of the extent of the *patria potestas* generally had been universally entertained by the Smṛiti-writers. It might be argued that there is no sufficient authority in the Smṛitis for extending the *patria potestas* as far as is done by Jīmūtavāhana. But there is far less ancient authority for the opposite doctrine of the Mitāksharā.

The Mitākshará doctrine.

The Mitākshara doctrine rests principally on a wide interpretation of the text of Yājnavalkya (II. 121) on the equal right of father and son in property ancestral. In Aparārka's Commentary on Yājnavalkya, which exhibits the same theory in a less developed form, it is introduced in the gloss on that text.[1] Now, if the sons are given a right in the ancestral property even during the life of their father, it follows that this right exists from the date of their birth. As, therefore, birth may be a source of proprietary right, the enumerations of the modes of acquisition in the Smṛitis are incomplete, and the characteristics of property cannot be gathered from the law-books (Çāstra) alone. In other words, property is secular and not religious by its nature.[2] Though the principal objection to his own theory had thus been successfully warded off by Vijnāneçvara, he thought it advisable to rest it on a Smṛiti text. This is how Vijnāneçvara or his predecessors, from whom he may be supposed to have borrowed his theory, came to fabricate a text, in which the doctrine that property is by birth is attributed to the holy teachers (Achāryas), and to attribute this text to the sage Gautama, who was looked upon as the principal authority in regard to the sources of ownership.[3]

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[1] Gaut. X. 2, 7, 39—42, 56; Manu I. 88—91; VIII. 410; IX. 326—334; X. 75—79, etc.; Yājn. I. 118—120; Vishṇu II. 10—15; LVIII; Nārada I. 3, 46—53.

[2] Mayūkha IV. 1, 3. Elsewhere the author of the Smṛitisangraha is only made to say that *Dāya* means "wealth descended, *i. e.*, inherited from the father or mother."—Smṛitich. I. 10, etc.

[3] See below, p. 110.

The father's power over ancestral movables and self-acquired land.

The birthright interest of the sons in the estate having been satisfactorily established, it became necessary to follow it out into its consequences and to defend it against the arguments which might be derived from some of the texts on alienation. These texts,as shown in a former Lecture, were destined to restrict the father's power in dealing with the family property, not to enlarge it. However the statement contained in one of these texts, that the father is master of the gems, pearls, coral and other (property of this kind) was by some writers interpreted as a special provision relative to the father's power over ancestral movables. This view is refuted by Vijnāneçvara (I. 1, 24), and he states, moreover, that the father's independent power over movables of any description is strictly limited to indispensable acts of duty, and to those acts which are enjoined or permitted by special texts, such as affectionate gifts, maintenance of the family and the like (I. 1, 27). The other half of the same text puts a restriction on the father's and grandfather's power over immovables. The opponents of the birthright theory explained it as relating to property inherited from the grandfather, and as proving that property arises on the death of the previous owner, and not by birth (Mitāksh. I. 1, 21). Vijnāneçvara refutes this argument (I. 1, 24, 27), which is closely analogous to the opinion advanced in the Dāyabhāga (II. 23), and establishes, with the aid of another text, the birthright interest of the sons in the whole immovable estate, whether ancestral or acquired by the father. The consent of the sons to an alienation of immovable property may never be dispensed with, except where necessity or pious purpose can be shown (I. 1, 28-29).

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[1] After having pointed out that the equal ownership of father and son does not annul the father's ownership and does not prevent him from defraying the expenses of the ceremonies enjoined in the Veda (see Mitāksh. I. 1, 18), because the father may perform the Agnihotra after having separated his sons from himself, or with their permission, Aparārka goes on to say that partition does not create proprietary right, as in that case the father would not be owner before partition. Then he defines partition as shown before (p. 108) and compares the condition of coparceners to the status of partners in business or in sacrificing. He concludes by observing that, were ownership created by partition, even theft would be a source of property.

[2] I am aware that the object of the disquisition on the secular nature of property is differently stated in the Mitāksharā itself (I. 1, 16). But in the Mitāksharā this disquisition does not seem to have preserved its original form.

[3] This text is not found in the printed editions of the Gautama-Smṛiti, nor in Haradatta's standard old Commentary of that work, the Gautamiya Mitāksharā, and it is impossible to reconcile it with the genuine text of Gautama on the sources of ownership (X. 39) and with the analogous texts of the other sages. Besides it was unknown to Jīmūtavāhana, Aparārka and to the Mithilā writers. One passage of the Dāyabhāga (I. 19) has been conjectured to contain an allusion to it. But it is far more probable, that Jīmūtavāhana in this place refers to the genuine text of Gautama on the modes of acquisition.

Gifts of movables by the father.

It will appear afterwards that in a partition made by a father, head of a family, his power of disposal, even in the case of his self-acquisitions, is strictly limited to the right to retain two shares for himself. Here, however, the distinction between movable and immovable property is brought into play, and has called forth the rule (I. 6, 15–16; I. 1, 25), that any gifts consisting of movables, which has been bestowed on a son by his father before partition, becomes his independent property, and need not be divided with the co-heirs at the time of partition. Immovables, though self-acquired, can only be given with the consent of the other sons. These rules, of course, would not apply to a disposition by will under the modern law, as a disposition by will which was not contemplated by the Indian Jurists may be compared to a partition, but not to a gift by the father.

Apparent

The account here given of the Mitāksharā doctrine of

Contradiction.

proprietary right leaves several apparent contradictions out of sight. Thus, the Mitāksharā, in treating of partition, gives the father an absolute power of disposal over all his self-acquisitions, whether movable or immovable, which it is difficult to reconcile with the birthright interest previously awarded to the sons in the whole immovable estate of the father. Again, in the Section on Property, the father's power over movables, such as pearls, gems, coral, etc., is declared to be general, subject only to the condition of its being exercised for a lawful purpose, such as affectionate gifts, maintenance of the family, etc. In the Section on Partition, however, the distinction between movables and immovables is entirely disregarded, the distinction between self-acquired and ancestral property being treated as the decisive one. In the later Digests these contradictions become even more glaring, as they quote a number of texts not found in the Mitāksharā, by which the father's power over all his self-acquisitions is asserted in very strong terms.[1] It is true, that the Mayūkha (IV. 1, 5), in order to reconcile the conflicting statements in regard to the father's power over movables, declares the above text relative to pearls, etc., to be applicable to such movables only as are not liable to destruction. It has also been said that the text on alienation in Mitāksharā (I. 27) is only meant as a prohibition of a gift of the entire property, which would leave the family destitute.[2] This is no doubt the original import of that text, but the Mitāksharā gives a wider signification to it. Vijnāneçvara in this, as in several other cases, has apparently not taken the trouble of being quite consistent with himself. It should, however, be considered that the Introduction contains the general rules about proprietary right, which are limited in their application in the Section on Partition. This appears more clearly from the Vīramitrodaya (pp. 74, 87), and viewing the matter historically, the distinction between movable and immovable property is no doubt the original and fundamental one. Therefore the real opinion of Vijnāneçvara, as stated before, appears to be this—that immovable property, even where it is self-acquired, may never be alienated by the father except in cases of necessity, or for a pious purpose, but that his power over movables of any description includes the free bestowal of them as an affectionate gift, especially on any of his sons. It is far from improbable, moreover, that the restrictions placed on the father's power over movables are in the nature of a moral injunction rather than of a legal rule, especially as regards self-acquired movables, over which the father must naturally have possessed a very large discretionary power.

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[1] Smritich. VIII. 22—28; Mayūkha IV. 4, 5; Mādhavīya 13; Vivādachintāmaṇi 229 (Tagore); Aparārka, etc.

[2] Mayne, § 231.

The father's power of alienation under the Dáyabhága.

Under the Dāyabhāga the father's power of alienation and unequal distribution is infinitely greater than under the Mitāksharā. The father's right to alienate ancestral movables is rested on the very text which is quoted in the Mitāksharā in connection with this subject.[1] Jīmūtavāhana lays much stress on the word 'all,' which is twice used in that text. According to him, this term is used in the first hemistich in order to include ancestral movables of every description, while its insertion in the second hemistich tends to show that even in the case of ancestral immovable property the father has full authority to make a donation or other transfer of a small part (II. 22—24). The texts, which are relied on in the Mitāksharā, are disposed of by Jīmūtavāhana with the remark that an act, though morally wrong, may be legally valid, because a fact cannot be altered by a hundred texts (II. 30).

Universality of the doctrine of *Factum valet*.

This saying of Jīmūtavāhana has attained considerable notoriety, and the doctrine of *Factum valet*, as it is called, has often been held out as one of the most characteristic features of the Bengal system. In reality, however, it is simply one out of those many tricks by which the Indian Jurists managed to get rid of an old law which did not suit them. It may be compared, in particular, to that popular distinction between Vidhi, 'an injunction,' and Arthavāda, a mere 'explanatory statement,' which contains either a praise of things enjoined or a blame of things prohibited.[1] This Mīmāmsā distinction is of constant recurrence in the very oldest Commentaries, such as the works composed by Medhātithi and Aparārka.

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[1] Colebrooke observes (Dāyabhāga. II. 22) that this quotation has been evidently taken from the Mitāksharā. But why should it not have been taken from an earlier Commentator of Yājnavalkya, *e. g.* Viçvanya, whose opinions are quoted with approval in the Dāyabhāga. Jīmūtavāhana introduces this text as belonging to Yājnavalkya. and though it is apparently opposed to another text of Yājnavalkya (II. 121), this contradiction vanishes under Jīmūtavāhana's interpretation of the latter text (II. 9).

Jímútaváhana's views regarding alienation are not peculiar to him.

Jīmūtavāhana's doctrine regarding alienation probably is no more peculiar to him than the doctrine of *Factum valet*, though the loss of many of the earliest Digests renders it impossible to establish this fact positively. Thus much is certain that his doctrine is not only in accordance with those opinions of earlier teachers which are refuted in the Mitāksharā, but is readily deducible from the old texts themselves.

Alienation of common property to the extent of one's own share.

Another Bengal doctrine concerning alienation, *viz.*, the rule that among undivided coparceners each may alienate property to the extent of his own share, cannot be traced to the Smṛitis, but it is a mistake to think that it is unknown to the other Schools.[2] Indeed it accords itself with the spirit of the Mitāksharā Law just as well as, or better than, with the general principles of the Bengal School.

Various readings.

It should also be kept in sight, in judging the causes of a great deal of the difference of doctrine referred to, that several important Smriti texts are read differently by the Bengal writers than by their brethren in other parts of India. There is no reason for considering the readings adopted by the Bengal writers as less old and less authentic than the readings found elsewhere.

Naturally indivisible property.

In no other part of the Law of Partition is the diversity of reading so great as in the texts on indivisible property. Thus in the leading text of Manu on naturally indivisible objects (IX. 219) no less than three of the nine articles referred to by that authority are explained otherwise in the Dāyabhāga than in the Mitāksharā, and this difference of interpretation is entirely due to a difference of reading. The writers of all Schools, however, appear to be agreed about the general principle that, as Jagannātha expresses it,[1] "the indivisibility of clothes and the like is founded on the letter of the revealed law, not inferred from its sense." The practice of their own time evidently was opposed to the rules laid down in the older Smṛitis, which tended to operate as a bar to division in general, and in accordance with the principle enunciated by Bṛihaspati, that the articles in question shall be divided with Yukti, 'equity,' *i. e.*, so as to avoid injuring either them or the interests of some one coparcener.

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[1] Thibaut, Arthasaṇgraha, p. xiv (1882).

[2] The text of Nārada (XIII. 42, 43), on which this doctrine is principally founded in the Dāyabhāga (II. 31), is referred to separated coparceners in the other Schools. This is no doubt correct. See *ante*, p. 108. Jīmūtavāhana's doctrine regarding the right of undivided coparceners is, however, closely connected with his definition of partition (I. 7—9). and this definition has been virtually adopted in the Mayūkha. where Nēilakhaṇṭha opposes the different definition proposed in the Mitāksharā and Vīramitrodaya. See May. IV. 1, 6 ; IV. 3. 2 (Mandlik, 34, 38). Aparārka's definition of partition differs likewise from Vījnāneçvara's. in that it treats the right of each coparcener to a particular share as existing even before partition.

The Smṛitichandrikā (VII. 39—47) proposes a very free interpretation of the phrase "they are declared indivisible" in the text of Manu, *viz.*, as meaning that they are declared to be so, "by certain inconsiderate persons." This, of course, reverses the import of the whole passage, and accordingly the Smṛitichandrikā observes further on that the prohibition of division has to be disregarded. The other Digests do not go quite so far as this, and the old Bengal writers do not seem to have been acquainted with the important text of Bṛihaspati. Nevertheless, the tendency to explain the old texts away is clearly evinced in what they say about the indivisibility of houses. They[2] refer this rule to a house, garden or the like, or to several houses, which had been constructed on the common estate by one or several of the coparceners during the life of the father: such a house, if built with the tacit consent of the father, may be kept by the builder, even after the father's death.

Separate acquisitions.

In the law regarding separate acquisitions the difference of doctrine between the several Schools is more important than in reference to indivisible property.

Dâyabhága.

The only author who has succeeded in weaving a tolerably consistent doctrine out of the old texts is Jīmūtavāhana. He places the texts of Manu (IX. 208) and Vishṇu (XVIII. 42) about the indivisibility of separate acquisitions made with the aid of joint funds at the head of his disquisition. The whole contest, according to him, turns in every case on the question whether joint funds have been used or not in making an acquisition. All the divers rules about separate acquisitions, he says (VI. 1, 8, 38), may be summed

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[1] Dig. V. 2. ccccIxxiii.

[2] Dāyabh. VI. 2, 30; Dāyakr. IV. 2, 29, 30; Raghunān. (Sanskrit text) 26.

How far the Mitákshará doctrine differs from it.

up in the general maxim that wealth acquired with the use of joint funds is divisible. Wealth otherwise acquired is indivisible, and the particular kinds of separate acquisitions, such as the gains of valour, etc., are brought in merely as illustrations of this principle. The gains of science are declared exempt from these rules in Section I, in those cases where the coparceners are equal or superior in knowledge to the acquirer; but in Section II. 1—19, this restriction seems to have been dropped. This doctrine, which is recommended by its simplicity, has been considered as the correct view of the law, and enforced not only in Bengal, but in the other provinces as well. It appears to me, however, that in this case as elsewhere the study of the Bengal writers has unduly influenced the interpretation put on the opinions held in the other Schools of Law, though this is manifestly one of the points in regard to which the Bengal and Mitāksharā Schools are at issue. In much of what Jīmūtavāhana says, no doubt, he is perfectly backed by Vījnāneçvara (I. 4). But Vījnāneçvara holds that in the two texts of Yājnavalkya (II. 118-119) relative to impartible property, the condition that the acquisition should have been made without use of the joint property has to be read with the four kinds of separate acquisitions specified by Yājnavalkya, *viz.*, a friendly, or a nuptial, gift, hereditary property recovered, and the gains of science. To other acquisitions than these four, the clause regarding the non-use of joint funds is not held applicable by Vījnāneçvara, and the consequence is, that, according to him, all other separate acquisitions are partible, no matter whether involving an expenditure of joint funds or not. As an instance of such other acquisitions, he names property obtained by religious gift (*Pratigraha*), which is generally held divisible.[1] Jīmūtavāhana (VI, 1, 53), on the contrary, argues that the principle of the divisibility of acquisitions made with the use of joint funds is applicable even in the case of property obtained by (*Pratigraha.*)

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[1] Colebrooke (Mit. I. 4, 7 note) mentions certain variations of reading in this passage. The reading Pitṛidravyavirodhena, "with prejudice to the patrimony," occurs in the Sarasvatīvilāsa as well (para. 180). But it is impossible to reconcile this reading with the contents of para. 8, in the Mit. Colebrooke has, therefore, been right in rejecting it and in following the Subodhinī. The printed editions differ; but it is curious to note that the reading Pitṛidravyavirodhena is found in two very old MSS. of the Mitāksharā, in the Elphinstone College, Bombay, and in the Deccan College, Puna. Vījnāneçvara is quite right too in stating that the precept to divide property obtained by religious gift corresponds to established usages. Even the Guru or spiritual father has a right to the alms collected by his pupil.—See Manu II. 51; Vishṇu XXVIII. 10, etc.

Double share of the acquirer according to the Dáyabhága.

The question regarding the double share to be allotted to the acquirer in certain cases constitutes another difficult part of the Law of Self-acquisition. This question has come off with very insufficient treatment in the majority of the Indian Digests, but its practical importance has rendered it the subject of much lively discussion among the British Jurists. My own inquiries have caused me to arrive at the persuasion that every attempt to reconcile the conflicting statements of the different schools and in particular to explain the brief and somewhat obscure remarks of Vījnāneçvara with the aid of the more ample disquisitions of Jīmūtavāhana and other Bengal writers is entirely hopeless. The Dāyabhāga (VI. 1, 14, 23—29; II. 65—73) rests this part of its doctrine on two texts of Kātyāyana, and one text of Vyāsa, with the aid of which it establishes the following principles:—1. Of property gained by personal exertion of one member but with prejudice to the family estate, the acquirer shall take a double share. 2. Of property acquired by a son, the father shall take one-half.[1] The acquirer shall take two shares, in case the paternal wealth had been used by him, and one-half, in case it had not been used. The other coparceners shall receive one share each in the first case, and nothing at all in the second case, or the father shall take half, if he is very eminent, and two shares only, if he is not so.

Acquisitions of a son.

The Mitákshará doctrine regarding divisible property.

The Mitāksharā doctrine on this subject, which rests on the text of Vasishtha (XVII. 51), occurs at the end of the Section on Impartible Property. When, therefore, Vījnāneçvara winds up his argument by saying (I. 4, 29) "It is settled that whatever is acquired at the charge of the patrimony is subject to partition," it is obvious that the partible property here mentioned must be that which he had referred to before (in para. 6), *viz.*, property acquired by the same four modes, but with the use of joint funds.[2] That it is right to interpret the statements of Vījnāneçvara in this way is expressly confirmed by his Commentator, Viçveçvara.[1] Para. 6 contains the general rule, which is explained and restricted in para. 29 by a statement of the mode in which the partible property mentioned in para. 6 has to be divided, *viz.*, so that the acquirer retains a double share of it. The two following paragraphs lay down the law in regard to those cases where the acquisition has not been made in one of the four specified modes, but in some other manner. From the terms used in para. 31, it is quite clear that all the more ordinary modes of acquisition are referred to in this place, agriculture and trade being given as instances. The difference between these acquisitions and the other wholly partible acquisitions, which had been mentioned in a previous passage (para. 29), lies in this, that the former embraces separate acquisitions only. It is in the nature of a gift to be offered to one person only. But where in an agricultural family one member exerts himself in tilling the family estate, the fruit of his industry will not come to him alone, but to the whole family, at the time of the harvest. Similarly, in a family of artisans or traders, the ordinary income will naturally be joint, and has, therefore, to be considered as an increment to the family property under the Mitākisharā.

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[1] Where the paternal wealth has not been used, the father shall take two shares only under the Dāyabhāga. But two shares in this case is equivalent to a half, the other half being due to the acquirer.

[2] It might be argued that the term "whatever is acquired" should be interpreted literally, in order to make it agree better with what follows in §§ 30-31. Even under this interpretation, however, there is hardly any other mode left besides the four special modes of acquisition, to which

The later Digests of the Mitákshará School.

The doctrines of the Mitākshară have been persistently followed in the other Digests of the Bombay, Benares and South Indian Schools, and it is only as to the choice of arguments and examples that the more recent writers differ from Vījnāneçvara. Thus the Mayūkha (IV. 7. 1-2), after quoting texts of Manu and Vyāsa, which are closely analogous to the text of Yājnavalkya, explains that the separate acquisitions mentioned in these texts must be understood to have been acquired without the use of joint funds. This explanation is founded on the text of Yājnavalkya, which shows that Nīelakantha understood this text precisely in the same manner as Vījnāneçvara.

Mayúkha.

Further on he repeatedly refers to the use of common funds as determining the divisibility or indivisibility of the separate acquisitions mentioned by other sages. But all these texts are nearly identical in substance with the text

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§ 29 might be applied, the usual modes of acquisition being covered by §§ 30-31, and Pratigraha acquisitions by §§ 2—9.

[1] (*For the Sanskrit, see Appendix.*)

Vivádataṇḍava.

Víramitrodaya.

Madanapárijáta.

Smṛitichandriká.

of Yājnavalkaya. He adds finally (IV. 7, 14), that property acquired by other means than the specified modes, *viz.*, learning and the rest, shall be divisible, though the joint estate has not been used in their acquisition. This principle is rested on a somewhat forced interpretation of a text of Manu (IX. 205). As instances of such other modes of acquisition he mentions agriculture and other kinds of labour (Kṛishyādicheshṭa).[1] The Vīvādataṇḍava follows the Mitāksharā and transcribes literally the remark of Vījnānēçvara (I. 4, 6), that the phrase "acquired by himself without use of the joint funds" must be construed with every member of the sentence. It also agrees very closely with the Mayūkha. The corresponding Section of the Vīramitrodaya (248-249) is unusually brief. Thus much, however, becomes clear that this work, like the Vīvādataṇḍava, fully assents to the Mitāksharā doctrine that the term "without use of the family property" has to be connected with each of the four impartible objects subsequently specified by Yājnavalkya. The Madanapārijāta similarly gives but a brief extract from the Mitāksharā. Of the Southern Digests, the Smṛitichandrikā contains one passage (VI. 2), which is simply the Dāyabhāga over again. In commenting on Kātyāyana's text regarding divisible property, the Smṛitichandrikā observes that the term "self-acquired property" in this text has to be qualified by adding the clause "without use of joint funds." This, however, is an incidental statement merely, and throughout the copious Chapter on Impartible Property (VII.) the Smṛitichandrikā follows the principle that all the old texts on property exempt from partition have to be interpreted subject to the condition that the family property has not been used in making them. Now this is the Mitāksharā and not the Dāyabhāga principle. For under a somewhat free interpretation of the Mitāksharā, the rule that the clause "acquired without the use of joint funds" has to be construed with every member of the sentence in the text of Yājnavalkya, is equally applicable to all the other texts on the subject of separate acquisitions. This interpretation of the Mitāksharā Law is actually proposed in the oldest and most authoritative Commentary on that work, Viçveçvara's Subodhinī,[2] and it agrees equally with the opinion of Vījnāneçvara's colleague, Aparārka.[1] Practically speaking, the result is this—that the distinction between acquisitions with and without the use of joint funds is extended to property gained by agriculture and the like in the Smṛitichandrikā, whereas the Mayūkha, as we have seen, declares such acquisitions as these divisible in every case. The Sarasvatīvilāsa follows the interpretation proposed in the Smṛitichandrikā of the text of Kātyāyana on divisible property, but further on, it adheres as closely as possible to the Mitāksharā, to the extent of frequently copying the very words of Vījnāneçvara. Thus the whole argument in the Mitāksharā (I. 4, 7—9) about the divisibility of property acquired by religious gift and other acquisitions not covered by the four specified modes of acquisition is repeated word for word in the Sarasvatīvilāsa (§§ 180—184).[2] This argument is omitted in the Mādhavīya (47—50), but in other respects the Mitāksharā has been followed. This comes out especially in the interpretation put on the texts of Yājnavalkya (II. 118—120).

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[1] Neither Borrodaile's nor Mandlik's rendering of this passage is sufficiently literal.

[2] See Mitāk. I. 4, 6, note.

Sarasvatívilása.

Mádhavíya.

As regards the double share of an acquirer, the Mayūkha, Smṛitichandrikā, Mādhavīya restrict the rule of Vasishṭha to one particular kind of separate acquisitions made without the use of joint funds, *viz.*, to property thus acquired by learning. They quote, however, an analogous text of Vyāsa, which lays down the same rule in the case of property gained by valour. The Smṛitichandrikā goes further than this, and infers from the use of the term *ādi*, etc., in the text of Vyāsa, that his rule is equally applicable to wealth received with a maiden, or on account of marriage, and the like acquisitions. This comes nearly to the same thing as the Mitāksharā Law. In the Vīramitrādaya and Sarasvatīvilāsa, this part of the law is entirely omitted. The Vīvādataṇḍava observes that the acquirer's double share is strictly limited to the gains of science and valour, and does not accrue in the case of other acquisitions.[1]

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[1] It is true that Aparārka in his gloss on Yājn. II. 118, declares self-acquisitions as an independent and comprehensive class of separate acquisitions. But in commenting on 119, he observes (*for the Sanskrit. see Appendix*): "Amicable gifts, etc., are impartible where they have been acquired without using the paternal wealth."

[2] This does not come out in Mr. Foulkes's translation of this passage, which differs very considerably from Colebrooke's rendering of the corresponding Section of the Mitāksharā. But in the Sanskrit text there exists no other difference worth speaking of between the two works than this, that at the end of § 180, the Sar. reads Dravyāvirodhena for Dravyāvirodhena. As for this reading, see *ante*, p. 116.

Property inherited from collaterals.

There has been a great deal of discussion formerly as to whether property inherited from other persons than a father, grandfather or great-grandfather should rank as ancestral or as self-acquired. The latter view appears to be he received one at present, but from what has just been said about the narrow views of the Mitāksharā School in regard to the extent of separate and self-acquired property,[2] it might be inferred that the contrary opinion ought to be accepted as the correct one. It is, however, impossible to bring property inherited from collaterals within the Mitāksharā definition of self-acquired property, but neither can it be made to rank with ancestral property, which *ex vī termini* does not include any other inherited property but what has been inherited from an ancestor. The best way for getting out of the difficulty is by assuming that property inherited from collaterals has been entirely overlooked by Vījnāneçvara. If this assumption be correct, and there is every reason for supposing so, the whole question is one of those which can only be decided by considering the whole policy of the Mitāksharā Law. Now, ancestral property has been stated with justice to be co-extensive with the objects of unobstructed inheritance under Mitāksharā Law. Hence it may be inferred that property inherited from collaterals should follow the incidents of self-acquired property.[3]

Ancestral property recovered.

The question regarding the right to ancestral property lost and recovered by one of the coparceners has become entirely divested of practical importance in the present day, though it is discussed very amply by all the Indian Commentators. Under British rule the continued forcible detention of a landed estate or parts of it by strangers, or the abstraction or non-delivery of hereditary income (Nibaṇdha), is not likely to occur, and should it occur, it may be instantly removed by legal remedies. Let me barely mention, therefore, that the disquisitions of the Indian Jurists on this subject relate chiefly to the best mode of

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[1] (*For the Sanskrit, see Appendix.*)

[2] It is just possible that to a father's self-acquired property, the ordinary narrow definition of that term may not be applicable under the Mitāksharā. But all the other Digests without exception quote texts of Brihaspati and others, in which the self-acquisitions of a father are expressly referred to.

[3] (*For the Sanskrit, see Appendix.*)

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reconciling the conflicting texts of Çankha and Yājnavalkya on recovered property. Thus it is stated by Aparārka[1] and Kamalākara, that the recoverer of lost property shall take it entire, where the consent of the coparcener to the recovery has been obtained, but that he shall obtain one-quarter only as his preferential share, and an equal share of the residue, where the consent of the coparceners has been wanting. The Mitāksharā, Mayūkha, Mādhavīya, Dāyabhāga and nearly all other Commentaries on the other hand make the nature of the recovered property, whether movable or immovable, the test for determining the extent of the recoverer's proprietary right over it. The condition of acquiescence on the part of the coparceners is mentioned as a secondary circumstance only in these works. It seems to relate to underhand practices on the part of one coparcener,[1]—*e. g.*, where one without the knowledge of the rest should by intriguing at the Court of a Rājā procure for himself a grant or hereditary office which the Rājā had promised, but not actually delivered to his father.

The Mithilā Law in regard to self-acquired property agrees in the main with the principles laid down in the Dāyabhāga. Thus Vāchaspatimiçra,[2] in commenting on Manu's (IX. 208) and Vishṇu's (XVIII. 42) identical rule on self-acquisitions, states (250) that these are mere instances of such acquisitions, all property ranking as self-acquired which has been obtained without the use of joint funds. In regard to the gains of science, he agrees neither with the Mitākshará nor with the Dāyabhāga. He declares them as an independent and important source of separate property. The text of Kātyāyana, on which the equal participation of learned co-heirs is founded in the Dāyabhāga (VI. 1, 18, 19), is explained away in the Vivādachintāmaṇi, and the upshot of its doctrine on the subject is this, that the gains of science are impartible, where the knowledge was acquired from a stranger and at the expense of a stranger, and when the expense of maintaining the student's family has not been defrayed by a relative. The double share of a father in the acquisitions of a son is not recognized in the Mithilā School, and the double share of an acquisition involving expenditure of joint funds is rested on the texts of Vasishṭha and Vyāsa, but it is not held applicable to those gains of science and valour which are stated by Kātyāyana.

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[1] West and Bühler, II. xxiii (1st edn.)

[2] P. C. Tagore's reading of this passage is not exact. He has adopted Jones's translation of this text (though omitting the last clause of it), which is based on the gloss of Kullūka. But the Vivādachintāmaṇi reads Svayamīhitalabdhamcha for Labdhanstān and takes this as a separate clause, denoting " property acquired by agriculture and the like." The same reading occurs in some other Digests, *e. g.*, in the work of Aparārka, who explains it by " property acquired by personal exertion, but without bodily effort."

Time of partition.

The time of partition is another point of contention between the Mitāksharā and Dāyabhāga. The nature and origin of this conflict of opinion has been briefly discussed at the commencement of the present Lecture. In comparing the rules of Jīmūtavāhana with the early law on this subject, it will be found that his opinions are, on the whole, more conservative than those of Vījnāneçvara, though the latter is the earlier writer of the two.[1] For the rest Jīmūtavāhana's doctrine is very simple, and may be briefly stated as follows:—There are in the main two periods of partition, one after the death of both parents, when every coparcener is free to demand it, and the other during the life of the father, at his own desire (II. 8; I, 35, etc.) For the term "the father's death," he substitutes in other place (I. 38—44), "the cessation of the father's ownership," which may follow on his degradation or on his becoming indifferent to wealth as well as on his actual

According to the Dáyabhága.

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[1] Thus the text of Yājnavalkya (II. 121), regarding the equal ownership of father and son in property ancestral, is in the Mitāksharā School explained as implying that a partition of the family property is demandable at will by the sons But this text does not contain any reference to the time of partition, and the precisely analogous text of Vishṇu (XVII. 1, 2) lays down the same proposition in regard to a partition made by the father. Therefore the equal ownership attributed to father and son can only mean that the father's power of unequal distribution is restricted to his self-acquired property. This is the interpretation proposed by Dhareçvara, and it is one of the three interpretations mentioned in the Dāyabhāga (II. 9—19, etc.) for the purpose of avoiding the conclusions arrived at in the Mitāksharā. The text of Kātyāyana (see above). on which the father's right to a double share of his son's acquisitions is rested in the Dāyabhāga, is quite correctly translated in that work, whereas its meaning is strangely twisted in the Vīramitrodaya 64, and other Digests of the Mitāksharā School. In some cases. the difference of interpretation rests on difference of reading. It has been shown before that the Bengal reading of the important text of Cankhalikhita regarding the father's consent to a partition is more likely to be the genuine one than the reading of the other Digests. For the text of Nārada (XIII. 3). the reading of the Mitāksharā (I. 2, 7), is countenanced by all MSS. of the Nārada-Smṛiti to which I have had access. But this difference of reading is of no great consequence.

demiso. He also refers in one place to a partition made by the father at the special request of the sons (II. 86—88). But he refutes the opinion that the sons have a birth-right interest in the property of their father; for, if that were the case, partition would be demandable even against the father's wish (I. 19). This, it appears, was a monstrous doctrine in the eyes of Jīmūtavāhana. A right to enforce a partition on the part of the sons does not even arise when the father has been incapacitated by reasons of old age, etc. (I. 42-43). The father's right to institute a partition is restricted in the case of ancestral property, by the condition that he must wait till the mother is past child-bearing (I. 45). Among collaterals, each coparcener may demand a partition of ancestral property at any time (III. 1, 16, etc.) The rule that partition in the same case should be delayed till after the mother's death (III. 1.1—14, &c.), has been abrogated by the later writers of the Bengal School.[1] The question as to the right of females to demand a partition need not detain us here.[2] If one of several collaterals wishes for a separation without demanding a share, because he considers himself able to earn his subsistence by himself, his separation may be effected by giving him a trifle, in order to prevent future litigation with his heirs (III. 2, 28). The original import of the texts on which this rule is founded has been pointed out in the last Lecture.

According to the Mitákshará.

In his interpretation of these texts, Jīmūtavāhana is backed by the writers of the Mitākshară School, with this characteristic difference, that these writers have the separation of sons in view, instead of the separation of collaterals. Under the Mitākshară, sons may not only demand a separation with a nominal share, but they may ask a full share at any time, as far as the ancestral property is concerned. Even of the self-acquired property of his father, a son may demand a partition, and institute it against his wish in two cases—either (1) when the father's sensual desire and his interest in wealth is extinguished and the mother is past child-bearing and the daughters are married, or (2) when the father is disabled by lasting illness, mental infirmity or extreme old age, or unworthy to hold property on account of his addiction to vice. Including partition instituted by the father himself and partition after the father's death, the times for partition under the Mitākshara are four. On failure of sons, the right to demand a partition descends to the grandsons; on failure of grandsons, the later Digests extend this right to the great-grandsons.

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[1] See Dāyabh. III.§1. 1 notes ; Dāyakr. VII. 2.
[2] See below, p. 133.

Character of the Mitākshará doctrine.

That the sons should be authorized in certain cases to demand a partition of their father's self-acquisitions seems a thoroughly anomalous theory no doubt and one strangely opposed to the strong sense of the deference due to elders, which pervades the Indian Law. Even their right to demand a partition of ancestral property at any time has been recently contested.[1] Nevertheless it is impossible to doubt that these two propositions are actually contained in the Mitākshara, and that the Mitākshara doctrine has been consistently interpreted in that sense in all the subsequent Digests of the Mitākshara School. The most decisive passage in the Mitākshara itself is in I. 5, 8, where a distribution of the ancestral estate is said to take place solely by the wish of a son, even in spite of the mother being capable of bearing more sons and the father retaining his worldly affections. The natural inference is, that even in the case of self-acquired property a partition may be instituted by the sons, where the mother is past child-bearing, etc., as stated before. The same doctrine is positively stated by Aparārka. After having laid down that in the case of ancestral property the sons possess an equal right with the father to institute a partition, and may compel him to distribute it, where he does not wish for a division, he goes on to say that even in

The other writers of the Southern School.

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[1] Nelson's view of the Hindu Law (1877), 37—47. Mr. Nelson, in order to prove the fallacy of the doctrine deduced from the Mitākshara, has quoted a number of old texts which are opposed to that doctrine. So they are no doubt; but this fails to prove anything in regard to the opinions held by Vijnāneçvara himself. Mr. Nelson's analysis of Mitāksh. I. 5. 1—7 is based solely on Colebrooke's reading, and does not stand the test of a comparison with the Sanskrit original. § 3 has been misunderstood. This para. in Colebrooke's translation is indeed "couched in singularly obscure and unsatisfactory terms." It may be translated literally as follows: "Supposing the father to be divided (from his coparceners) or to have no brothers, shall the estate, which has been inherited from the grandfather, not be divided at all with the grandson in that case, because it has been directed that shares shall be allotted in right of the father if he is deceased (and not otherwise); or admitting partitions to take place (in that case), shall it be instituted by the choice of the father alone: in order to remove the two doubts, which might thus be entertained, the author says."

the case of property acquired by the father partition may, in certain cases, be instituted by the sons under two texts of Nārada (XIII. 3, 16), and one text of Çankha,—that is to say, the sons may institute or demand a partition of their father's self-acquired property in all those cases which are mentioned in the Mitāksharā,[1] and besides in the case of his being influenced by wrath or engrossed by a beloved object (voluptuous).[2] It is true that Aparārka, much like Jīmūtavāhana, ordains that a partition by the sons shall be delayed till after the death of the mother, in case she is capable of undertaking the management of the estate.[3] He also says that the eldest son shall act as guardian of the rest, while they are minors or have not absolved the study of the Veda. The doctrine of the Smṛitichandrikā regarding the right to demand a partition is founded on the same texts as the doctrine of Aparārka. Only Devaṇṇabhaṭṭa quotes a text of Hārīta (I. 30-31), under which the loss of vigour and remote absence of the father have to be added to the other reasons which make a partition demandable by the sons. As regards that occasion for partition, where the father is free from defect but indifferent to wealth, etc., he argues that it presupposes the consent of the father (I. 35—37). That all these rules are applicable to self-acquired property, is not expressly stated, but it follows from the reason of the law.[4] The same may be said of the dissertations of Mādhava and Varadarāja on this subject, which are nothing but brief extracts from the Mitāksharā. A very copious extract from the Mitāksharā, which includes all the more important passages on the subject under notice, is to be found in the Sarasvatīvilāsa.[5]

Benares School.

In the Benares School, the Vīramitrodaya and Vīvādatandava repeat the doctrine of the Mitāksharā and defend it against the objections raised by the Bengal writers and by Dhāreçvara. This early author had explained the text of Yājnavalkaya (II. 121) as a mere prohibition of

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[1] The Anyathāçāstrakarin of Aparārka seems to correspond to the Adharmavartin, "one addicted to vice," of the Mitāksharā (I. 2, 7); both terms are rather vague.

[2] (*For the Sanskrit, see Appendix.*)

[3] *Ibid.*

[4] See the translator's note, p. 102.

[5] If the text quoted in § 80 had been correctly rendered in the corresponding part of Colebrooke's Digest, it would follow that a father might refuse in any case to give his consent to a partition. See, however, Smṛitichandr. VI. 1, note.

LECTURE VI.

unequal distribution according to the pleasure of the father. Against this, the Vīramitrodaya (69) declares that this text relates to the time as well as to the mode of partition. The periods of partition are reduced to three in the Vīramitrodaya, and this seems to be an effect of the Bengal doctrine regarding the time of partition. The question to be investigated in every case according to the Vīramitrodaya is whether the father has ceased to be worthy or capable of independence or not; if he has, the sons may institute a partition against his wish. This is meant to explain the Mitāksharā Law and not to supplant it. For, says Mitramiçra, if the law were interpreted otherwise, great confusion could arise. It would be unreasonable to suppose that the circumstances mentioned by the sages should sometimes conjointly and sometimes singly operate as a cause of partition, and it would be difficult to discriminate between the principal and concomitant causes. On the other hand, the similitude of this theory with the Bengal doctrine is obvious enough, especially as the text of Çankhalikhita is quoted according to the Bengal version of it, though it had been previously introduced as a text of Çankha according to the reading of the Mitāksharā (p. 46). The Madanapārijāta gives a brief extract from the Mitāksharā. The Vaijayantī,[1] in commenting on Vishṇu (XVII. 2), observes, that the equal ownership of father and son does not give the latter the right to demand an equal division, but makes partition demandable by the sons even during the life of the father.[2] The corresponding Section of the Mayūkha (IV. 4. 1—7) is very brief, but it is sufficient to prove the general agreement existing between that work and the Mitāksharā. In regard to the times of partition, the Mayūkha adheres to a strictly literal interpretation of the Mitāksharā doctrine and of the texts on which it is founded. This leads to the recognition of five distinct times of partition, the extinction of the father's temporal passions and the cessation of the mother's courses being reckoned as separate occasions. The previous marriage of sisters is added as a concomitant condition in both of these cases. Another difference between the Mayūkha and Vīramitrodaya might seem to exist in regard to the Law of Representation. The texts of Devala and Kātyāyana, on which the great-grandson's right to partition and succession is rested in the Vīramitrodaya, are in the Mayūkha restricted in their application to the case of reunited coparceners (IV. 4, 21—23). The Mayūkha contains, however, another passage (IV. 1, 3)[1] which shows it to agree with the other modern Digests in extending the right of representation to the fourth generation inclusive.

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[1] In one place (49) the Vīramitrodaya refers to degradation and the like as creating a right in the sons to demand a partition of ancestral property even. The use of the particle even (api) in this passage may perhaps be interpreted as an express recognition of the principle, that the same right exists in property acquired by the father.

[2] (*For the Sanskrit, see Appendix.*)

The Mithilá doctrine.

The Vīvadachintāmaṇi does not say anywhere that the sons may demand a partition in the father's lifetime; on the contrary, the author of this work quotes the text of Çankha regarding the case of a doting father, according to the Bengal version, in confirmation of the principle that the independent property of the father must be kept intact and cannot be divided by the sons against his will.[2] From the fact that this rule is expressly given in regard to the father's independent property only,[3] ancestral property might be supposed to be divisible against the will of the father. But this is nowhere stated, and the difference between ancestral and self-acquired property under Mithilā Law comes out in the mode of partition only, and is of no consequence for the time of partition. It is a significant fact that the text of Yājnavalkya and the analogous texts of other Smṛiti-writers on the equal ownership of father and son in property ancestral are nowhere quoted in the Vīvadachintāmaṇi.

Character of Mitákshará doctrine.

Before closing this subject, I must not omit to note that, judging the Mitāksharā doctrine on its merits, it is hardly possible to take a favourable view of it. It is too much opposed to the old text-law and to modern usage to be looked upon as more than a theoretical development.

Partition during minority of a coparcener.

In regard to partition during the minority of one or several coparceners the same conflict prevails between the Digest-writers as in the Smṛitis. Thus Aparārka refers the texts of Manu (IX. 105) and other writers about Primogeniture to the guardianship to be exercised by an eldest brother over his junior brothers while they are minors, and quotes with approval the text of Kātyāyana, which prohibits partition during the minority of a coparcener. He even extends this prohibition to the case where their regular course of Vedic study has not been completed by all coparceners.[1] The Vīramitrodaya rests its contrary opinion on another text of Kātyāyana.[2] This view, which is certainly the more reasonable one of the two, has not become law. Proved pregnancy, on the other hand, is still considered as a bar to partition in any case where the birth of a son would add to the number of sharers.[3]

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[1] See, too, Mandlik 33, note 1.

[2] Tagore 226. See 229, where it is said that the father's self-acquired property shall be equally divided by the sons after his death only.

[3] This appears from the Sanskrit text, p. 225. P. C. Tagore's rendering of this passage is somewhat loose.

Mode of division according to the Dáyabhága

The opposite tendencies which we have seen at work in the law regarding the periods of partition, are equally exhibited in the conflicting opinions about the mode of division. The Bengal writers show themselves anxious to uphold the father's discretionary power over the property. The Mitākshara School cuts down his rights, and places him in the position of a mere manager. It is only in regard to self-acquired property however that the father's unlimited power of disposition is recognized in the Dāyabhāga. Such property may be distributed at pleasure by the father, and he is even at liberty to withhold it entirely from partition (II. 16, 17, 57, 58, 76, 81, 82, etc.) The remark that the adjustment of the shares in the case of an unequal distribution should be governed by lawful motives, such as partiality for a pious, or compassion on an incapable, son, is perhaps in the nature of a moral injunction rather than of a law (II. 74, 83). To ancestral movable property the same principles are applicable as to the self-acquired property of the father (II. 22, 23). The extent of his interest in the acquisitions of a son has been discussed before. Of ancestral immovable property he cannot retain more than a double share, and as regards the distribution of the remainder he can only choose between two modes of division: equal division, and division with the customary deductions in the order of seniority[4]

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[1] (*For the Sanskrit, see Appendix.*)

[2] Vīram. 90; West and Bühler II. 8-9 (1. ed.)

[3] Mit. I. 6. 12; Mayne, § 396.

[4] In judging this rule, it is necessary to bear in mind what Jīmūtavāhana says (III. 2, 27) about partition with deductions after the father's death. The observation that "persons of the present day do not entertain much veneration for their elders, and that elder brothers desiring of deducted allotments are now rare," holds good equally in a partition made by the father.

(II. 37, 50, 76, 79). This rule holds good equally in a partition of any part of his property which he makes at the special desire of the sons (II. 86, 87).

Character of this system.

All the principal doctrines of the Dāyabhāga have been adopted by the later writers of Bengal. In examining the texts on which these doctrines are rested, they will be found to be on the whole deducible from these texts without an artificial method of interpretation, though this is occasionally resorted to by Jīmūtavāhana. What is particularly important, in his interpretation of the well-known text of Yājnavalkya (II. 114) on partition by a father, Jīmūtavāhana is backed to a certain extent by a standard old writer of Western India, *viz.* Aparārka. This text of Yājnavalkya, says Aparārka, refers to three modes of division of self-acquired property: unequal division according to the pleasure of the father, unequal division with the customary deductions in the order of seniority, and equal division.[1] Jīmūtavāhana is of the same opinion, except so far that, according to him, the first mode of division applies to self-acquired property only, whereas the two other modes concern the distribution of ancestral property (II. 79). The opinion of the Bengal writers is also shared to a certain extent by Nandapaṇḍita, who, in the Vaijayantī (XVII. 1), refutes the doctrine of the Mitāksharā,[2] and by the Mithilā writers.[3] The case is similar as regards the interpretation of Yājnavalkya's text on the legality of an unequal distribution made by the father.[1]

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[1] (*For the Sanskrit, see Appendix.*) "It is certain that by the words (of Yājn. II. 114), Let him separate his sons at pleasure, an arbitrarily unequal mode of division by the absolutely free choice of the distributing (parent) is referred to. Nārada says on this subject: For such as have been separated, etc. (XIII. 15). It must not be argued from the use of the phrase 'the father is the master' (in the text of Nārada), that this text refers to the specific deductions mentioned in (other) texts. For the master in a division with specific deduction is not the father, but the law (Çāstra)."

[2] (*For the Sanskrit, see Appendix.*) The assertion of the Mitāksharā that the words (in Yājn.'s text II. 114) "Let him separate his son at his pleasure," do not refer to an independent mode of partition, and that partition with deductions and unequal division are the only two modes of distribution mentioned in this text is refuted by the texts of Vishṇu Bṛihaspati, Kātyāyana, Nārada, and others, as being opposed to the description in these texts of arbitrary division as an independent mode of distribution."

[3] Vivādachint. 224—30 (Tagore). See, too. 232, where the right of the father to a double share is said to apply in the case of ancestral property. Tagore (p. 230) has adopted Colebrooke's translation of the text of Yājnavalkya (II. 114, see Mitāksh. I. 2. 1). The whole of Vāchaspatimiçra's disquisition shows, however, that he did not interpret this text in conformity with the Mitāksharā, but that he followed Aparārka and the rest.

The Mitákshará system.

Vījnāneçvara and his followers construe the leading text of Yājnavalkya in an essentially different manner, and only agree with Aparārka so far that they refer it to self-acquired property exclusively. In their opinion, the different modes of division mentioned by Yājnavalkya are not more than two in number; the partition with deductions and equal partition being mere amplifications of the arbitrary mode of division, which is described in the first half of the text. This interpretation is partly based on philological grounds, and in part on the obvious injustice of a mode of division, under which, *e. g.*, a lakh of rupees might be given to one son, a single cowrie to a second, and nothing at all to a third. The partition with deductions is declared obsolete further on in the Mitāksharā (I. 3, 7) and Mayūkha (IV. 6, ii) and other works of the Mitāksharā School. The Madanapārijāta omits all the texts relative to an unequal partition, except one text of Manu (IX. 112). There are many other analogous texts of Gautama and others, says Viçveçvara; but these have been omitted for the sake of brevity, because unequal partition is obsolete.[2] The Vivādatanḍava lays down generally that in the present (Kali) age partition should always be equal and never unequal.[3] The only inequality allowed in the Mitāksharā consists in the retention of a double share by the father. But the validity of this rule is restricted to self-acquired property, and of course it does not apply in the case of a division against the wish of the father. The Mitāksharā doctrine is implicitly followed in the Sarasvatīvilāsa (§ 217) and Madanapārijāta; only the latter work grounds the father's right to a double share on the text of Vasishṭha on self-acquired property rather than on the texts of Nārada. The other Digests show a decided tendency to put further restrictions on this privilege of fathers. This is effected chiefly by means of the text of Çānkhalikhita, which treats of the double share to be awarded to an Ekaputra, "father of an only son." The Mayūkha,[4] Vīramitrodaya (63), and Vivādatanḍava, strangely

The double share to be retained by the father.

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[1] Dāyabh. II. 75 ; Mitākh. I. 2, 13, 14.
[2] (*For the Sanskrit. see Appendix.*) [3] *Ibid.*
[4] IV. 4, 12 ; Mandlik, 42-43.

enough, take this term to denote "the father of an eminent son;" and the two last-named works explain that it is equitable to award a double share to the father of an eminent son, because such a son is capable of gaining his subsistence by himself. There is also a passage in the Vīramitrodaya (70), in which equal partition between the sons and parents is declared to be the preferable mode of division under a text of Kātyāyana. The Smṛitichandrikā (II. 1, 29—36) gives the text of Çankhalikhita its natural meaning,[1] but qualifies it by a text of Hārīta, so as to arrive at the conclusion that the right to retain a double share obtains in the case of an aged father, but not otherwise. It quotes likewise the text of Kātyāyana (*ibid.* 37). The Mādhavīya (9-10) places the retention of a double share by the father on a par with the other modes of unequal partition, which are declared obsolete in the present age of the world.[2]

The son born after partition.

The rights of after-born children are a fruitful theme for contention with the Indian Jurists. The Smṛitis, as shown before, contain two conflicting sets of texts in regard to this subject. The one set directs the re-opening of partition in their favour, the other set cuts down their rights so far as to give them a claim to their father's share only. When the era of Commentators arrived, those texts, which allot a share to the son born after partition, were restricted in their application to the posthumous son of a father, brother or other coparcener, and the further condition was added that the mother's pregnancy must not have been known at the time of division, as in the contrary case the division had to be delayed till after her delivery. This rule was deduced from the text of Vasishṭha, which at first seems to have recorded a mere local usage. It would certainly have been an inconvenient proceeding to open up the partition again whenever a new sharer was born, and the rights of sharers neither born nor conceived at the time of partition were sufficiently protected by giving them a claim to the entire property of their father, where he was separate, or to a share, where he had reunited with his other sons. The Mitāksharā, by splitting up the text of Yājnavalkya (II. 122) into two independent sentences, has contrived to introduce both of these rules into that text, and has been followed in this by Mādhava (13-14), Aparārka, Mitramiçra[1] and others. Devaṇṇabhaṭṭa,[2] Kamalākara, Nīlakaṇṭha,[3] Vāchaspatimiçra[4] and others rejecting this forced construction, consider the whole text of Yājnavalkya as applicable to the case of a posthumous son, the pregnancy of whose mother had been unknown at the time of division. Jīmūtavāhana (Chapter VII.) differs from these writers so far that he refers the texts of Yājnavalkya and Vishṇu to an illegal division of hereditary property by the father, whereas the other texts, according to him, apply to a division of self-acquired property by the father. This opinion is connected with the peculiar views of Jīmūtavāhana regarding the illegitimacy of a partition made while the mother is still capable of bearing children.

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[1] See above, p. 119.

[2] Varadarāja restricts the double share to the case of 'inherited property;' could this be an erroneous reading?

Caste distinctions.

The mode of division in the case of offspring of mixed marriages continued to form a subject of discussion with the later Jurists, though such marriages had become obsolete long before their own time. The only case in which the Law of Partition is influenced by caste distinctions is where a Çūdra has begotten a son upon a Dāsī. The partition and rights of such persons will be discussed in the Law of Inheritance.

Rights of females.

The maintenance of those female family members who are not specifically named as sharers in the texts on partition, and of disqualified males and the defrayment of the marriage expenses of unmarried females, is a charge on the estate. The Law of Maintenance, as it is administered by the Courts, has been chiefly developed by statute. The scanty provisions of the Indian Jurists on this subject are scattered through the Chapters on Partition, Succession of Females, Reunion, Exclusion from Inheritance, and Criminal Law. How far the Indian Law goes in providing for females connected with a family may best be gathered from the fact that even concubines and married women who do not rank as legitimate wives have a claim to be maintained. This rule, it is true, has been deduced from the old texts by means of an extremely forced interpretation of those texts in which the duty to maintain a widow is declared.

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[1] Vīram. 92—94. [2] Smṛitich. XIII. 17—19. [3] Mayūkha IV. 4. 35-36.

[4] Vivādach. 275 (Tagore). It should be observed, however, that these writers have recourse to divers contrivances of a similarly artificial character in order to remove the seeming conflict between the first and second hemistichs of this text.

In order to make these texts agree with the modern law, which constitutes the sonless widow an heir, instead of awarding her a maintenance only, they were said to relate to concubines and other women not ranking as legitimate wives. However little foundation there is for this interpretation, it appears to have been universally received,[1] and may therefore be supposed to express the popular feeling of the period. Nor is it improbable that the same feeling may have existed in the Smṛiti period, with its lax views in regard to the relations to the sex, which are so strikingly exhibited in the laws regarding subsidiary sons.

Where no assets.

Here the question arises whether the right of maintenance attaches in every case, or subject to the existence of assets only. Direct statements bearing on this subject are somewhat rare in the Treatises on Inheritance, but the real opinions of the Jurists in this matter may be ascertained by an examination of their views regarding the liability for debts and the mutual obligations of family members. The Law of Debt, which is treated very amply in all the Indian Digests, and has been a favourite topic even in the time of the Smṛiti-writers, does not fall within the range of these Lectures.[2] Let me point out merely that the English principle introduced by the Courts that the liability for debts is in every case co-extensive with the assets inherited from the debtor, however equitable in itself, is entirely foreign to the Hindu Law. The liability of the sons and grandsons for debts contracted by their father and grandfather, is utterly independent of the possession of assets left by them. The same principle would seem to apply *a fortiori* to the maintenance of near female relatives. But the obligation of maintaining them is moreover enjoined in the most unconditional terms by Kamalākara. He says that it is incumbent on the sons and grandsons to maintain indigent widows and daughters-in-law, though no wealth of the father may be in existence.[3] Yet this is precisely what has been doubted in a well-known Bengal case.[1] In reality the claim of the female family members to maintenance does not become extinct either through the absence of assets, or in the somewhat analogous case of a separation of the coparceners having taken place.[2] It is perfectly true that the much canvassed passage of the Smritichandrikā (XI. 1, 34), which has been adduced by the opponents, denies the claim of a widow to be maintained by any other coparcener of her husband than him who has taken his assets. But if this rule, isolated as it is, proves anything, it is this that in selecting the widow's guardian among her husband's coparceners, the first question to be answered is this—Which of these persons has assets of her husband in his hands? The case of one leaving no assets is not provided for by this rule.[3] Other passages bearing on the same subject are the following:—Virtuous daughters-in-law, who have no sons, are stated to have a right to a starving maintenance in a text of Çankha, which is quoted with approval in the Vivādachintāmaṇi (291 Tagore) and other works. Nandapaṇḍita, in commenting on Vishṇu (V. 113), says, that the prohibition to forsake a relation extends to all persons mentioned in a text of Çankhalikhitā: "A mother must not be abandoned, nor must any virtuous Sapiṇḍa be abandoned."

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[1] Mitāksh. II. 1, 28; Smṛitich. XI. 1, 35, 38, 42, 49; Vīram. 170—173; Dāyabh. XI. 1, 48, etc. Similarly, where an illegal marriage has been contracted, the bride being related to her husband in a prohibited degree, or otherwise ineligible, she has nevertheless a claim to maintenance against her husband and his family. This appears clearly from texts quoted in Raghunandana's Udvāhaṭṭava and other works.

[2] The rules of the Smritis on the Law of Debt have been analysed by the author in Das ind, Sohuldrecht (Transact. of the R. Bavarian Academy of Science for 1877).

[3] (*For the Sanskrit, see Appendix.*) Vivādataṇḍava, Section on Strīdhana.

Division of liabilities, partial division, and division of profits.

The Smṛiti doctrine, that the common liabilities have to be divided in the same way as the assets, has passed unaltered into the Digests. Partial division as regards the property is not expressly referred to either in the Smṛitis or in the Digests. That it was an old and common practice may be inferred from the rules about indivisible property. Partial partition as regards the owners must have become common, as soon as each coparcener obtained the right to demand a partition. A partition of profits (Phalavibhāga) is also specifically mentioned in several Digests.

Rights of women on partition under Mitákshará Law.

All the writers of the Mitāksharā School are agreed about the principle that the widows and daughters of predeceased undivided coparceners, who have left no sons, can never claim more than a maintenance. They restrict the rules of the metrical Smṛitis regarding the rights of these and other females to a share to the wives, mothers, sisters, etc., of those coparceners between whom the division actually takes place. Where the coparceners choose to remain united, all their female relations may claim a maintenance, nothing more. The same rule, according to some writers, obtains even where they separate. Thus the view that the mother's right to a share at a division among brothers amounts really to the setting apart of a portion sufficient for her maintenance, which shall never exceed a son's share, is elaborately put forth in the Smṛitichandrikā (IV. 4—17, 29) which grounds this doctrine on the Vedic text, in which the incapacity of women to inherit is declared. In regard to the case of a division during the life of the father, the Smṛitichandrikā (II. 38, 39), in accordance with Aparārka and others, resorts to a literal interpretation of the text of Yājnavalkya (II. 115), under which the right of the wives to a share is absolutely limited to the case of an equal division by the father. Even in that case, the wives shall not take the shares themselves, but the husband (father) shall take them on their account. It was no doubt somewhat difficult to reconcile the allotment of a separate share to the wife with the general principle of the perpetual community of wealth between husband and wife, as declared by Apastamba (II. 6, 14, 16) and Hārīta. The opinion of the Smṛitichandrikā on this subject was therefore shared by the author of the Madanaratna and others, but it was successfully refuted by the author of the Vīramitrodaya (59-60), who points out that the shares of wives stand on a par with their Strīdhana. As regards the mother's share in a division after the father's death, the literal interpretation of that term, which is given by both of the two oldest Commentators of Yājnavalkya, *viz.*, Vījnāneçvara and Aparārka, is followed in the Mādhavīya (15), Mayūkha (IV. 4, 18), Vīramitrodaya (79), Varadarāja's Vyavahāranirṇaya (9-10), Vivādachintāmaṇi (240 Tagore), Vivādatāṇḍava, Vaijayantī (XVIII. 34),[1] Madanapārijāta. In some of these works, such as the Madhavīya and Vivādataṇḍava,[2]

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[1] Mayne, § 376. See, particularly, West & Bühler, 245—252.

[2] See West & Bühler. 231—245.

[3] It is worthy of remark that this rule is not repeated together with the rest of Devaṇṇabhaṭṭa's statements on this subject in the Sarasvatīvilāsa (§§ 520—525). In § 522 the duty of a father to provide for his son's widow is stated unconditionally.

The widow under the Smṛitichandriká.

Under the Víramitrodaya, etc.

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[1] The Vaijayantī, however, limits this rule to movable property, because women are incapable of holding immovable property under a text of Bṛihaspati.

[2] (*For the Sanskrit, see Appendix.*) "But in the Smṛitichandrikā it is said that a mere maintenance shall be given when the property is large, and a son's share when it is small. However to a woman having a son, a son's share shall be allotted ; one having wealth shall take half a share."

the opposite doctrine of the Smritichandrikā is expressly refuted. The doctrine of the Smritichandrikā is, however, upheld in the Sarasvatīvilāsa (§§ 100—118) as far as partition after death is concerned; and in regard to partition during the life of the father, the author of that work seems to assent to those who place the determination of the share of a wife entirely at the option of her husband (§§ 68—79, 112). He also quotes the view that this question, especially in the case of Çūdras, has to be determined by custom (§§ 79, 118). Modern custom in Southern India appears to correspond to the doctrines of the Smritichandrikā and Sarasvatīvilāsa.[1] But in the other provinces custom seems to vary, and there is no ground for the present for deviating from the teaching of the authoritative works, which is distinct and uniform in those provinces.

Where she possesses Strīdhana.

Those works[2] which follow the Mitāksharā[3] in this matter have generally adopted the other doctrine of Vijnaneçvara as well, that where a woman is already possessed of Strīdhana, she is to take so much property only as will make her allotment equal to a son's share.[4] Many works of the Mitāksharā School[5] agree in stating that on a partition after the father's death,[6] stepmothers may claim a share as well as mothers, and they found this opinion on the text of Vyāsa, under which sonless stepmothers and paternal grandmothers are declared to possess the same right as mothers, or on a text of Brihaspati. Some writers include the step-grandmother, because of the term 'Sarvah' (all) in the text of Vyāsa. The Vīramitrodaya (79—81), Vivāda-

Question as to share of the step-mother, etc.

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[1] Mayne, § 402.

[2] The Vivādachintāmaṇi (231 Tagore) explains the first text of Yājnavalkya differently, as declaring equality of division between the several wives. The English rendering of this passage is very loose.

[3] Colebrooke has been censured for introducing the term 'life-portions' into the first text of Yājnavalkya (Mit. I. 2, 8). See Mandlik, 213.2. But this is a misprint of the Madras edition. The original edition has *like* portions.

[4] The Madanapārijāta, while assenting to this doctrine, notices a literal interpretation of the term 'a half' as well. Thus, if a son's share were to amount to ten Nishkas, the mother would take five Nishkas.

[5] Aparārka, Smritichandrikā (IV. 7), Sarasvatīvilāsa (§ 100), read "The sonless wives of the father" for "The wives of a sonless father" in Mr. Foulkes's translation), Bālambhaṭṭa. Vivādachintāmaṇi (240 Tagore), Mādhavīya (15), Varadarāja (9), Mayūkha (IV. 4, 19).

[6] That in a distribution made by the father, a son's share should be given to all the wives, no matter whether they have sons or not, is expressly stated in some of these works only, such as the Vīramitrodaya (19), Vivādachintāmaṇi (*ibid.*), Smritichandrikā (II. 1, 39), Bālambhaṭṭaṭīkā.

tandava and Vaijayantī, however, distinguish between stepmothers who have sons and those who have none. The former shall take a son's share, but the latter can claim a maintenance only. The Vivādatandava extends this rule to step-grandmothers.[1] These views, judging from the arguments used to support them, appear to be due to the influence of the Bengal School. The same result has been arrived at in the Madanapārijāta by a different process of reasoning, the texts of Vyāsa and Brihaspati being entirely ignored in that work, and both texts of Yājnavalkya being referred exclusively to equal participation of the sons with their own mother. This is, indeed, the plain meaning of these texts, and it is highly probable that Vijnāneçvara himself understood them in the same way as his eminent follower Viçveçvara. There has been a great deal of controversy about this matter, which might have been avoided, if Colebrooke's rendering of this passage of the Mitāksharā (I. 7. 1) were quite exact. Thus 'his sons' should be 'their sons.' It is true that Bālambhatta and Mitramiçra considered the stepmother to be included in the term *Mātā* in the text of the Mitāksharā, and the Subodhinī is silent. But these facts do not diminish the weight of the opinion delivered in the Madanapārijāta.[2]

The fourth share of a daughter.

A similar conflict of opinion, as in regard to the mother's share, prevails in reference to the fourth share ordained for a daughter in a division among brothers. Only the opinion of those who hold that the term 'a share' is indefinitely meant, is far older and far more general in the case of the daughter than in the case of the mother. In the lifetime of the father, it was argued, it is left to the discretion of the father to marry his daughters, taking a gratuity from the bridegroom. How then should they be made sharers of the family property after his death.[1] Others pointed to the obvious injustice done to the brothers by assigning a fourth of a brother's share to each sister, where the number of sisters and brothers is unequal.[2] The result was that the term "a fourth of a share" was declared to denote property sufficient to meet the sister's marriage expenses. This view is combated in such early works as the Mitāksharā and Medhātithi's Manubhāshya. It is attacked equally, or tacitly disapproved, in the other Commentaries on Manu, and in the Mayūkha (IV. 4, 40), Vīramitrodaya (81), Vīvādatandava, Madanapārijāta, Vaijayantī (XVIII. 32). The Madanapārijāta, after expressing disapproval of this view as being opposed to the Mitāksharā and to Medhātithi, observes:—" Or this matter may be regulated by local usage." A similar opinion is expressed in the Mādhavīya (19). The Smritichandrikā (IV. 7, 18—48) declares that the daughters shall take for the purpose of nuptials, but not in right of inheritance, a fourth of a share, where the estate is large, and a son's share, where it is small. This view seems to have been borrowed from Medhātithi, who says, that the term "a fourth share" designs the amount of wealth to be allotted to the daughter on her marriage in the shape of ornaments and other property. Where a fourth part of the property would not be sufficient for the maintenance of the sister, a whole share should be allotted to her up to the time of her marriage; after marriage she shall take a fourth, however small, her maintenance having to be defrayed by her husband.[3] The view that the sister shall only take property sufficient for her nuptials in every case is distinctly advocated in the Vivādachintāmaṇi (Tagore 248), and less distinctly by the Bengal writers.[4] Under the Sarasvatīvilāsa (§§ 133—145), the amount of property expended on the marriage of sisters depends solely on the pleasure of

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[1] (*For the Sanskrit, see Appendix.*) "We say that the same interpretation holds good for the term 'grandmother.'"

[2] The mother's right to a share on partition under Mitāksharā Law should probably be restricted in another way also. The Madanapārijāta says (*for the Sanskrit, see Appendix*):—"In a division of ancestral property the mother does not take a share, but merely her own ornaments and the like, because the two texts (of Yājnavalkya II. 115, 123) "If he." etc., and "By those," etc., relate exclusively to property subject to the father's control alone." That the first of these two texts relates to self-acquired property only is equally stated in the Vivādachintāmani (127, 230 Tagore), where the important word *atra* has not been translated. No other Digest contains this restriction. As, however, the Mitāksharā (I. 6. 7) refers Yājnavalkya's text on (II. 114) on partition by the father to his self-acquired property alone, it seems to follow, that the text (*ibid.* 115), which is merely an amplification of the rule regarding equal partition, should be interpreted in the same way. This is in accordance with the general policy of the Mitāksharā Law, especially with its treatment of the Law of Strīdhana.

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[1] This view is quoted by Medhātithi (on Manu IX. 118).

[2] Mitāksh. I. 7, 12, etc.

[3] Gloss on Manu, IX. 118.

[4] Bhāruchi, Aparārka, Yājnapati, the author of the Ratnākara, and others are cited as adherents of the same view. As regards Aparārka, the correctness of this statement is doubtful, though it is not easy to make out his real opinion on this subject.

Definition of the term 'a fourth part.'

the brothers. Varadarāja (41) makes it optional to follow either the Smritichandrikā or the nuptial property doctrine.

Supposing the term 'a fourth share' to be definitely meant, the next question is as to its calculation. It is obviously an ambiguous term, and may denote either a part of the whole, or a part of the son's share, or a part of what the daughter would have taken had she been a son. Unfortunately, the Commentators do not express themselves much more clearly on this point than the Smṛiti-writers themselves. The remarks of Vijnāneçvara and of most other Commentators may be understood to mean either that the fourth part of what a brother actually takes shall be allotted to a sister, or the fourth of what she would have taken, had she been a brother. The same ambiguity prevails in regard to the share of an adopted son, where a legitimate son has been subsequently born, and in regard to the share of a Çūdra's illegitimate son, as will be seen in Lecture VIII. In the opinion of an eminent Benares Paṇḍit, Duṇḍiraj Dharmaçāstrī, to whom I have proposed this difficulty, the sister ought to take a fourth of what she would have taken as a brother, and an analogous explanation should be adopted in the two other cases. It may, however, be argued that both equity and the way in which the Smṛiti-writers themselves deal with the somewhat analogous case of a division of the estate between the offspring of mixed marriages would seem to speak in favour of the other explanation. Thus, according to Vishṇu (XVIII. 38, 39), where there are two Brahman sons, and one Çūdra son, the estate shall be divided into nine parts, of which the two Brahman sons together shall take eight parts, and the one Çūdra son one part. Similarly, supposing there are two brothers and one sister, and one sister receives a fourth part of the share actually awarded to a brother, the property would in that case go into nine parts, and each brother take four-ninths. The third mode of computation, under which the 'fourth part' is reckoned as a fourth of the whole property, is brought forward in a modified form in the Smṛitichandrikā. All the sisters together shall take one-fourth of the whole property, in case they are equal in number or more numerous than the brothers. Where the sisters are less in number than the brothers, they shall take less than a fourth. Thus, where there are two or three brothers and three sisters, the three sisters together shall take a fourth part of the property, each of them taking one-twelfth. Where, however, there are two brothers and one sister, the sister takes a fourth part of a brother's share, *i. e.*, a sixteenth part of the whole property.[1] In the Dāyabhāga, an analogous doctrine may be found, but its application is restricted to those cases where the property is small and the number of brothers and sisters equal.

Rights of women in Bengal.

The Bengal doctrine regarding the rights of women on partition is characterized by the principle, that they have a right to demand partition in certain cases. The Introduction of this new principle is connected with the peculiar views of the Bengal School regarding the widow of an undivided coparcener. The rules resulting from this and other peculiar views of the Bengal writers on the rights of women have been treated very copiously in recent works on Indian Law. Let me only vindicate the corresponding part of Colebrooke's Dāyabhāga (III. 2, 35) and Digest (V. 3, cxxvi) against the reproach of containing a false translation of an important text of Kātyāyana. The translator of the Smṛitichandrikā, who has raised this reproach,[2] was perfectly right in translating that text differently, where it occurs in that work. But Colebrooke had another reading before him (svōmyam) than that which is found in the Smṛitichandrikā and other works (sāmyam). This difference of reading lies at the bottom of the difference of doctrine which exists between the Dāyabhāga and Smṛitichandrikā doctrines in regard to the daughter's share, where the estate is small.

Evidence of partition.

As for the signs of partition, the texts which treat of the nature of circumstantial evidence of divided status are quoted in nearly all the Digests. But the important text of Nārada or Kātyāyana, by which a limitation as to time is introduced into this part of the law, is not quoted anywhere except in the Smṛitichandrikā (XVI. 14) and Sarasvatīvilāsa. The latter work contains a great deal of unprofitable speculation on the signs of partition (§§ 786—853).

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[1] This is the Smṛitichandrikā doctrine in substance, though not in form. Nārāyaṇa (on Manu IX. 118) mentions a somewhat similar method of calculation, by which the daughters, if equal or superior in number to the brothers, take a fourth part of the whole property. Where, however, there is one sister and many brothers, each brother has to give a fourth part of his share to the sister. This seems a very unfair mode of division, and the same may be said of some other modes, which are refuted in the Subodhinī.

[2] Smṛitich., p. 52, note 3.

The practical part of its doctrine on this subject may be summed up as follows:—1. The first and most decisive sort of evidence in the case of a contested partition is written evidence, or the deposition of relatives, connections, respectable neighbours or other witnesses. Such evidence is called Jnāpakahetu, 'proof of division,' literally 'characteristic causes.' 2. On failure of the characteristic causes, effective causes, Kārakahetu, have to be considered. This designation is given to the divers kinds of circumstantial evidence mentioned in the old texts, because where such circumstances have existed for ten years, they will bring about a division, even where no formal separation had taken place.[1] Ten years is the ordinary period of limitation under the Indian Law.[2] If these sensible rules had been enforced by the Courts, they might have saved much litigation.

Concealed property.

The texts relative to the distribution or redistribution of hidden, embezzled, recovered, and wrongly distributed effects are quoted with approval in most Digests. The application of an ordeal, where property is suspected to have been concealed, is prohibited in some works under a text of Vṛiddhayājnavalkya. Other writers do not seem to be acquainted with this prohibitive rule, but the restriction with which the application of divine test is surrounded, *e.g.*, by Jagannātha,[3] makes it probable that this custom had fallen into disuse everywhere

Supposed forfeiture of share by an elder brother cheating his younger brothers.

Another conflict of opinion, which has been engendered by the text of Manu (IX. 213) on the punishment due to an elder brother who defrauds his younger brothers, is also more apparent than real. This text, which declares an eldest brother thus acting liable to forfeit his Right of Primogeniture and his share and to be criminally punished, may be supposed to belong to a period when the discretionary power of an eldest brother over the family property was greater than it now is, and any abuse of this power was, therefore, threatened with the most heavy punishment. No one of the Commentators of Manu, except Nārāyaṇa, explains it literally; they refer the term 'a share' to the additional share due to an eldest son. This privilege having been abolished in the middle period of Indian Law, it follows that the right to a full share is not forfeited by fraudulent practices on the part of an eldest son, or indeed of any son, supposing the text of Manu to be applicable to younger sons as well. This is precisely the view taken in the Mitāksharā (I. 9). Other old Commentators, however, such as Bhāraruchi and Dhāreçvara, who were followed by Rudradeva, went further than this and declared that the act was not even reprehensible;[1] or they contended that it was not equal in criminality to theft.[2] The former view is attacked by Vijnāneçvara (I. 9. 9—12). Most of his followers have entirely omitted this speculative question from their works; and in some of these works, such as the Smritichandrikā and Madanapārijāta, the text of Manu is likewise omitted. Aparārka argues that the act is not so criminal as theft of gold and not punishable by forfeiture of share, but has to be atoned for by a penance. The Dāyabhāga (XIII.) takes a similar view, and states (XIII. 2) that an eldest son shall not even lose his preferential share by such fraudulent conduct. The Vīramitrodaya, on the other hand (245—247), upholds the view that it constitutes theft, but does not deprive the perpetrator of his share. Not one writer quotes the text of Manu in connection with exclusion from inheritance. It is difficult to see how a different opinion could ever have come to be entertained about this text.[3]

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[1] The second sentence in § 795 should be rendered as follows: "The power of the efficient causes to even effect a separation, where it does not exist, will be pointed out further on."

[2] Manu VIII. 147; Yājn. II. 24; Nārada I. 4, 6.

[3] Dig. V. 6, cccxxiv.

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[1] Sarasvatīvilāsa §§ 780—782.

[2] Viçvarūpa (Dāyabh. XIII. 11), Aparārka.

[3] Strange's Manual, § 273; Grady, 318—367. See *contra*, West & Bühler II. XI (1. ed.); Mayne, § 409.

LECTURE VII.

THE LAW OF ADOPTION, HISTORICALLY CONSIDERED.

Practical importance of the subject—The twelve sons in the Burmese law-books and in the Indian law-books—Principle of classification—Fifteen sons —The son procreated anywhere — Natural sons—Adopted sons — The appointed daughter — The son of the appointed daughter—Illegitimate sons of the wife and daughters—The son of concealed birth—The son of a pregnant bride—The damsel's son—Niyoga—Origin of the Niyoga—The levirate—The question as to traces of polyandry in the law-books—Analogies from the laws of other nations—The son of two fathers—Adopted sons in the proper sense of the term—Early abolition of the Niyoga and other primitive modes of adoption—The modern law—No formalities required—Omission of ceremonies—Restrictions in regard to age—Adoption of a daughter's son and a sister's son —Supposed prohibition to adopt one whose mother the adopter could not have married—With whom is Niyoga possible?—The Vaijayantí on adoption—Niyoga obsolete—The other works on adoption—Doyámushyayaṇa adoption —Conclusion.

Practical importance of the subject.

THE early history of the Law of Adoption may be traced in those enumerations of subsidiary or secondary sons, which occupy such a prominent place in the Indian Law-books. Nearly all these substitutes for real sons are now long since obsolete, but they are deserving of attention, not only from a historical, but from a practical point of view, because the rules regarding them, being earlier in time, have in a measure formed the basis on which adoption in the proper sense of the term has been framed by the writers of the mediæval and modern Indian Digests. Both this fact, and the interesting new details regarding the *levirate* and other ancient forms of adoption which may be elicited from the Dharmasūtras, will justify me in going again over ground much trodden and reviewing briefly the statements of the ancient authors regarding the twelve sons.

The twelve sons in the Burmese law-books

The persistency of this classification may be inferred from the fact that it has found entrance into the law-books of Burma, in spite of the entirely different principles on which the Law of Inheritance in that country is built up. The Damathat agrees with the Indian law-books even as to the names, which it assigns to some of the secondary sons, in dividing them into two classes of six sons each, the first six being capable of inheritance, but not the other six, and in repeatedly urging the superiority of the Auratha (Aurasa in Sanskrit) or legitimate son of the body over all the other sons.

and in the Indian law-books.

This last point comes out very strongly in all the Indian law-books, even in those which, like the Vishṇusūtra, make no difference in principle between the six first and the six last sons as to their right of inheritance. Thus the author of the Vishṇusūtra states in the Chapter on Impurity caused by birth and death (XXII. 43), that the birth and death of sons other than a son of the body does not render their relatives impure for more than three days, whereas the ordinary period of impurity caused by the birth or death of near relations extends over ten days at least. In all the Smritis the legitimate son of the body is the first of all, and the right of the others to succeed can only arise where he is wanting.

Principle of classification.

Of the other sons also, each following one is precluded from inheriting by the one preceding in order, but the majority of the Smṛitis, especially the earlier works, divide, moreover, the traditional twelve sons into the beforementioned groups of six sons each, those of the second group being generally excluded from inheritance. As to the names of the sons and as to the rank to be assigned to each son in the order of sons, there exists a great deal of variance. This may be partly due to diversity of local usage: but in consideration of the fact that many writers, *e.g.*, Nārada, Vishṇu and Yājnavalkya, place none but real sons in the first group, and refer the adopted sons and other strangers to the second group, it is perhaps permitted to conjecture that this principle of classification, natural as it is, was the original one. It has, however, been entirely abandoned by such early writers as Gautama, Baudhāyana and Manu, who place the adopted sons very high in the series of sons, and was but partially retained by other writers. Some of the early lists of sons have been put together for comparison in Dr. Mayr's book "Dasindische Erbrecht" (86-87), and a very careful tabular synopsis of all the differences existing between fourteen enumerations of this sort has been recently given in Mr. Mayne's Hindu Law and Usage.[1] A fuller enumeration than is contained in any of the texts

Fifteen sons.

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[1] See, too, Rajkumar Sarvadhikari's Lectures, p. 258.

quoted by these two authors may be found in a Smṛiti, which is repeatedly quoted, anonymously it is true, in the works of such standard authors as Haradatta,[1] Viçveçvara,[2] and Nandapaṇḍita.[3] It runs as follows:—"The son of the body, the appointed daughter (Putrikā), the son procreated with another man's wife (Bījin), the son of the wife, the son of the appointed daughter (Putrikāputra), the son of a twice-married woman, the damsel's son, the son received with a pregnant bride, the son of concealed birth, the son given, the son bought, the son self-given, the made or artificial son (Kṛitrima), the son cast off and the son procreated anywhere[4] (Yatrakvāchanotpādita) are fifteen classes of sons. In the order here enumerated, each following son shall exclude the son preceding in order as giver of the funeral ball of rice and taker of a share. Thus it has been generally ordained in the Smṛitis." From the way in which the Smṛitis are referred to in this text, it may be inferred that the author has made up his enumeration from several older texts. In spite of its recent age, the fulness of this text makes it fit to serve as basis for an examination of the Smṛiti Law on this subject.

The son procreated anywhere.

Beginning with the son procreated anywhere, who comes in as the last of all, I may observe that the only other text in which this kind of son is referred to occurs in the Vishṇu-smṛiti; coming in, as it does, at the end of the whole list, the term Yatrakvāchanotpādita seems to mean "produced in any other manner than the sons previously enumerated," and may owe its origin to the systematizing spirit of a later age which wished to exhaust all sorts of sonship that might occur anyhow.[5]

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[1] In his two Commentaries on Gautama and Apastamba.

[2] Subodhinī.

[3] Vaijayantī and Dattakamīmāmsā. In the latter work he does not quote the whole text; in the former he attributes it to Devala. But another text, universally attributed to Devala, refers to twelve sons only.

[4] Sutherland (Stokes's Hindu Law Books, p. 560) has 'one born of a woman of unknown caste.' But this translation is inadmissible.

[5] This is virtually the view taken by Nandapaṇḍita in his Vaijayantī, but he has proposed another interpretation also, according to which the term Yatrakvāchanotpādita refers to all sorts of adopted sons only, and is intended to constitute them the legitimate sons of their natural father in those cases where he has no other sons living, whereas the Bījin, or son begotten on another man's wife, is one begotten on an express mutual understanding between the lawful husband and other man, that the offspring to be begotten by the latter shall not belong to the husband alone but to the begetter as well. It is possible, thirdly, that Yatrak-

Natural sons.

Among all fifteen sons, there are not more than four who really deserve that designation,—*viz.*, the son of the body, *i. e.*, the offspring of a legitimate marriage between his parents; the Bījin, *i. e.*, one begotten by a man appointed to raise offspring to another, which offspring came afterwards to be considered as the offspring of both;[1] the son of a twice-married woman, or concubine, and of course the Yatrakvāchanotpādita or son begotten anywhere, whatever may be the precise meaning of this term. The case of the Bījin will have to be discussed in connection with the custom of Niyoga. The divers positions assigned to the son of a woman twice-married, which vary from the third to the eleventh places, are characteristic of the various opinions held in regard to the legitimacy of the remarriage of women. The son begotten on a Çūdra woman or concubine is a fifth kind of real son. But he is mentioned by some writers only; and some of those writers even who admit him among the sons, notably Manu, have elsewhere prohibited any marriage union with a Çūdra woman.

Adopted sons.

All the other sorts of sons owe their being styled as such to a legal fiction, which is either adoption itself, or at least closely allied to that ancient contrivance for supplying the want of natural heirs and satisfying the craving of primitive times for male descendants.

The appointed daughter.

Thus the case of the appointed daughter and of the son of the appointed daughter is as closely analogous to adoption as possible. An appointed daughter is either one who has been charged by a father devoid of male issue to perform the customary obsequies to him after his death, and, consequently, to become his heir herself, or one who has been given in marriage by a father destitute of male issue on the condition expressed or implied that her son shall be his. In the first case, the Putrikā herself came to be regarded as a son and to take a very high rank among the twelve sons, as may be seen from a text of Vasishṭha,

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vāchanotpādita means "begotten in a low place," *i. e.*, on a woman of a low birth, a woman of the Cūdra caste. This explanation, which is brought forward by Jagannātha, and mentioned by Nandapaṇḍita as well, would make the Yatrakvāchanotpādita identical with the Paraçara or Nishāda, who is mentioned as the last kind of son by Manu, Baudhāyana and other authors. A fourth explanation which suggests itself is this—that Yatrakvāchanotpādita may be the offspring of illicit intercourse with another man's wife, or with a concubine.

[1] This is probably the precise meaning of the term Bījin. This kind of son seems to be identical with the Dvyāmushayāyaṇa of other writers.

in which the appointed daughter is said to be the third son, and from the text quoted above, which makes her second only to the son of the body. It is true, that the majority of the Smṛitis never mention the appointed daughter herself as a son, and this view of the matter has been adopted by several European writers. It is, however, decidedly opposed not only to the above texts and to the analogous texts of Bṛihaspati and the Brahmapurāṇa, but to the opinion of all the Indian Commentators, whatever may be thought of the philological value of their attempt at explaining the term Putrikāputra in the analogous texts of Manu and Yājnavalkya as denoting at one and the same time the son of a Putrikā, and a Putrikā considered as a son.[1] The difference of opinion between Vasishṭha and most other ancient law-writers is apparently due to the fact, that the custom recorded by Vasishṭha was confined to a particular locality; and a happy discovery of Professor Bühler renders it possible even to make a plausible guess as to the particular part of India where that locality has to be looked for. When reading the Rājataranginī, the well-known history of Kashmir, with a Kashmirian, he was told by the latter, that a certain Brahman, still living in Sṛinagar at the time, had changed the name of his only child, a daughter, into the corresponding masculine form, in order to obtain through her the same religious advantages as if she had been a son. The historical instance of the same practice in the Rājataranginī by which the Pandit's narrative[2] was suggested, *viz.*, the History of Princess Kalyaṇadevī of Gauḍa, whose name was converted by her royal father into the male form, Kalyāṇamalla, makes it certain that the custom of substituting by means of a peculiar legal fiction female issue to male, where the latter was wanting, is of considerable antiquity in some parts of India. As regards, however, the attempt on the part of the author of the Vasishṭha-smṛiti to trace it back to the Vedic period, it must be designed as a failure, because the passage from the Rigveda, which he quotes in support of this view, is shown by the connection to have a totally different sense than that which he assigns to it.[1]

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[1] Mitāksharā I. 11, 3; Mayūkha, p. 49 (Mandlik); Sarasvatīvilāsa, § 362, etc. In the first case, the term Putrikāputra is viewed as a *Tatpurusha* compound, and in the second case. as a *Karmadhāraya* compound. The latter interpretation has evidently been called forth by the desire to bring all the texts into harmony with one another. There is one text in the Code of Manu (IX. 134) which might seem to lend colour to this interpretation. It contains the statement that a Putrikā and an after-bornson shall share equally, because there is no Right of Primogeniture in the case of a woman. This might be taken to mean, that a Putrikā considered as a son has no claim to the additional share of an eldest son in the case referred to, because the Law of Primogeniture does not apply to women, and this interpretation has been actually proposed by Kullūka. But the Commentators—Medhātithi, Nārāyaṇa and Rāghāvanaṇda—state expressly that the absence of the Right of Primogeniture, which is here referred to. does not refer to the Putrikā herself, but to her son, and this is no doubt the correct interpretation throughout, as in the whole Section treating of the rights of the Putrikāputra (IX. 127—140), the Putrikā is not referred to in her own right, but as the mother of her son.

[2] Bühler, Sacred Books, XIV, p. 85.

The son of the appointed daughter.

The son of the appointed daughter, Putrikāputra, is universally mentioned as an heir. A number of authors—*viz.*, Baudhāyana, Yājnavalkya, Devala and Brihaspati—agree in declaring him second only to the legitimate son of the body (Aurasa); and Manu, by means of a copious discussion of the rights and position of the Putrikāputra (IX. 127—140), arrives at the result that he is perfectly equal to the legitimate son of the body. This high position of the Putrikāputra among the twelve sons may be taken to account in some measure for the preference which the Hindu Law of Inheritance exhibits for the daughter's son in general; he retained his rank at a time when the practice of appointing daughters had long become obsolete in nearly every part of India. There exists some difference of opinion as to whether it was necessary for the father expressly to reserve his dominion over the future son of a Putrikā at the time of her marriage, or whether the duty of offering the funeral oblations to his maternal grandfather and the right to take his property might accrue to the son of any daughter who had no brothers. Solemn formulas, by the recitation of which at the time of marriage a sonless father might secure the future male issue of his daughter to himself and religious rites accompanying such recitation, are quoted by several authors.[1] In Gautama's Dharmasūtra (XXVIII. 19) the opinion that a Putrikā and Putrikāputra may be appointed by the implied intention of the father alone is expressly stated to be the opinion of some—*i.e.*, an opinion which he does not hold himself. Manu[2] and Vishṇu (XV. 6), on the other hand, especially the latter, state as distinctly as possible that any daughter who has no brothers may become a Putrikā, even though no formality of any kind has been performed. The prohibition to marry a damsel having no brothers, because her son might be estranged from his natural father and declared a Putrikāputra, occurs in Gautama's Dharmasūtra as well as in other law-books.[3] This prohibition would seem to corroborate the opinion that any daughter who had no brothers was liable to become a Putrikā and her son a Putrikāputra, whenever the father might desire it, and without any agreement, formal or tacit, having been entered into at the time of her marriage. It is important to notice, that the Indian Law in this instance does not stand on ceremony. It may be presumed that in the precisely analogous case of real adoption, the customary ceremonies may likewise be dispensed with without injuring the validity of the act.

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[1] The Cruti text quoted by Vasishṭha (XVII, 16) is taken from the Rigveda I. 124—7. He takes it to mean that a maiden who has no brothers comes back to the male ancestors (of her own family). Sāyaṇa in his Commentary on the Rigveda mentions two explanations of this passage; the second of these agrees with Vasishṭha's interpretation. But the context shows the true meaning of the passage to be this—that Ushās, the goddess of the dawn. addresses herself boldly to the men after the manner of a woman who has no brother (her natural protector)! See Muir's Sanskrit texts V, p. 458; Mayr. Ind. Erbrecht, 96. Nevertheless, the interpretation proposed by Vasishṭha and Sāyaṇa must be very old, as it may be traced to such an early work as Yāsaka's Nirukta (III. 5).

Illegitimate sons of the wife and daughters.

The process by which the appointed daughter and the son of the appointed daughter are raised to the dignity of sons to their father and maternal grandfather respectively, though unusual, is perfectly consonant with our sense of morals and justice. The case is exactly opposite with regard to all the four sorts of sons that will now be considered. There exists a strange contrast between the strict rules of the Indian Legislators regarding the relation to the sex, and their readiness to sanction the rights even of the illegitimate sons of wives and daughters. The solution of the problem lies in that desire of male posterity which comes out so forcibly in the hymns of the Rigveda. So firmly had this desire been grafted on the minds of the people, that it continued to operate on the theory and practice of the priestly lawyers even a long time after the disappearance of that primitive social organization which had given rise to it. It has just been seen that it called forth a form of adoption unknown to most other countries.[1] It has given rise equally to some of the most curious notions regarding paternity.

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[1] Gautama XXVIII. 19; Vasishṭha XVII. 17; Vishṇu XV. 5; Manu IX. 127.

[2] Manu (IX. 136) speaks of the son procreated by a daughter "no made or made (a Putrikā)." Jones, following Kullūka, who in his turn follows Gautama (XXVIII. 19), translates, "that male child whom a daughter thus appointed, *either by an implied intention* or a plain declaration, shall produce." The other Commentators, however (Medhātithi, Govindarāja, Nārāyaṇa, Rāghavānanda and Nandanāchārya), give the text its plain meaning. Thus, *e.g.*, Nārāyaṇa states expressly that one not made means "one not formally declared a Putrikā." This rule of course is not intended to give the son of a brotherless maiden an unconditional right to claim the property left by his grandfather. He was to take it, if his grandfather chose to declare him his heir, but not otherwise.

[3] Gautama XXVIII. 20; Manu III. 11; Yājnavalkya I. 53.

The son of concealed birth.

I may be brief with regard to the son of concealed birth (Gūḍhaja Gūḍhotpanna), *i.e.*, the son of an adulteress; the damsel's son (Kānīna), who may be traced respectively to the Rahasū[2] and Kumārīputra of the Vedas;[3] and the son obtained through marriage (Sahoḍha), *i. e.*, received by the husband with a pregnant bride. These three may be grouped together as forming an application, unusually wide, it is true, of the Roman Law maxim *Pater est quem nuptiar demonstrant.* He is the father who is proved to be so by the marriage rite.

The son of a pregnant bride.

The Gūḍhaja and Sahoḍha are both the illegitimate offspring of a married woman, yet the Gūḍhaja is almost universally reckoned among the first six sons who are capable of inheriting, whereas the Sahoḍha is usually referred among the second six who, in general, have no such right. This difference appears to be due to the special ignominy attaching to a woman who has been married while pregnant, as the nuptial ceremony is expressly reserved for virgins alone.

The damsel's son.

The Kānīna, or damsel's son, is by some authors declared to be the son of him who afterwards marries the mother, whereas others make him the son of his maternal grandfather.[4] The later Jurists have devised divers modes of reconciling this contradiction.[5] Arguing the point on general grounds, it must seem strange that the illegitimate son of a young woman should be made over to one who may not even have known her at the time when the child was born. It is possible, therefore, that Nandapaṇḍita[1] may be right in restricting this rule to the case of a woman who at the time when the child was born had been engaged already to the man who afterwards became her husband and the adoptive father of her illegitimate child; in every other case, the child shall belong to the maternal grandfather.

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[1] As for the old Athenian custom, which may be compared to the Lutrikāvidhi, see Fustel de Conlanges, La cite' antique, 83.

[2] This term refers, however, to the mother of a Gūḍhaja, as it denotes a woman who had given birth to a child in secret (Max Müller).

[3] Rigvedā II, 29; Vajasaneyi Samhitā XXX. 6.

[4] Manu IX. 172; Vishṇu XV. 10–12; Vasishṭha XVII. 22; Nārada XIII. 18; Yājnavalkya II. 129.

[5] Thus the Mitāksharā says (I. 11, 7), that the Kānīna shall be considered as his maternal grandfather's son in case his mother remains unmarried in her father's house; but if she marries, he shall belong to her husband. For other interpretations, see Digest V. 6, cclxiii.

Niyoga.

The case of the Kshetraja, or son of the wife, who is generally mentioned as the second or third in the order of sons[2] offers a peculiar interest. In the early Vedic Schools, and even in the time of the Commentators, the rules regarding the Kshetraja have been the subject of much lively discussion, the results of which are visible in the Treatises on Adoption. This discussion has been taken up quite recently, though from a different standpoint, by a number of European writers, who have left no corner unexplored in Sanskrit Literature with a view to discover in it new evidence in favour of their favourite theories regarding the polyandry and communal marriage of primeval times. Before entering on a discussion of these theories, I must briefly state the facts of the case. The practice, on which the rights of the son of the wife are founded, is generally referred to by the name of Niyoga or Niyoga-dharma in the law-books. Now Niyoga means order, commission, and this order or commission in which the whole practice centres was to the effect that a brother or other near kinsman (Sapiṇḍa), or on failure of such, any member of the highest or Brahman caste was to beget a son and heir to one either deceased without leaving male issue, or alive but incapable of begetting legitimate male issue.[3] A strict line of conduct was prescribed both for the appointed man and woman during the time of their intercourse, and it was to be stopped when a child had been conceived, the express object of all these rules being to free the Niyoga from the taint of sin, which might otherwise have been considered to attach to it. For the same reason the procreation of several Kshetrajas was ordinarily prohibited, though there was an opinion in favour of the procreation, of a second Kshetraja son, but of not more than two Kshetrajas on any account, in order to secure thus the perpetuation of the race—the real end of the Niyoga. The violation of any of the above rules caused the offender to be expelled from caste. In the lifetime of the husband, the power to ordain the Niyoga is vested, of course, in him; but it is natural to ask who may have had the power to give such an extraordinary commission as this after his death. This question may now be satisfactorily answered from Vasishṭha's Dharmasūtra, which states (XVII. 56) that the father or brother of a (sonless) widow shall assemble the Gurus, who taught or sacrificed (for her deceased husband) and his relatives, and shall appoint her (to raise issue to the deceased). The Gurus intended here are the teacher, sub-teachers, and officiating priests of the deceased. It appears, therefore, that some time—six months according to the statement of Vasishṭha—after the death of one deceased without male issue, a sort of family council, consisting of the next-of-kin and the spiritual advisers of the deceased, used to be assembled in order to appoint the person who was to be charged with the office of raising issue to the deceased.

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[1] Vaijayantī XV. 11-12.

[2] Brihaspati seems to name him as the eighth kind of son. Digest V. 6. ccii; Vaijayantī, &c. But Kamalākara has a different reading of the same text, under which he is mentioned as the third son.

[3] Gautama XVIII. 4—14; XXVIII. 22, 23; Vasishṭha XVII. 14. 55—66; Baudhāyana II. 2. 4, 7. 10; II. 2, 3. 17; Vishṇu XV. 3; Manu IX. 56—63, 143—147, 164—167; Yājnavalkya II. 127-128; Nārada XII. 80—88, etc.

Origin of the Niyoga.

It is quite probable that the practice of Niyoga was originally confined to widows, like the well-known Hebrew custom of the *levirate*. This is at least the only form of the Niyoga to be met with in the Vedas[1] and in the Dharmasūtra of Vasishṭha. Whether Vishṇu, Yājnavalkya and Nārada were acquainted with the Niyoga practised during the lifetime of the husband, does not become clear, and the remarks of the Commentators do not decide the question. Manu speaks of the appointment of the wife in one place (IX. 161), but when discussing in detail the circumstances and results of Niyoga (IX. 55—68, 143—147), he seems to refer to the case of the widow alone. His Commentators deny this in order to bring every thing into harmony, but this is not the only inconsistency in Manu's statements concerning the Niyoga. Gautama shows himself acquainted with the appointment of a wife by her husband, but he only refers to it by way of an appendix to the rules relating to the Niyoga of a widow. Baudhāyana and Manu are the only two authors who have received the Niyoga of a wife into their definition of the Kshetraja.

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[1] Rigveda X. 40, 2.

The levirate.

The supposition that the *levirate* is the principal and original form of the Niyoga is favoured by the general history of the family relations in India. In the earliest times when the joint family existed in its purity, and partition of the family estate was an unknown and unheard-of proceeding, the wives of sonless brothers must have formed part of the inheritance; they passed into the property of the survivors together with the chattels of the deceased. Regular marriages of widows with their brothers-in-law in some castes are a very common practice even in the present day. There cannot be a more natural way to provide for them in case they are poor than by their contracting a marriage of this kind. But the widow of a rich and powerful man could not be treated in the same manner as a pauper, nor was it consonant with equity that his property should pass to another line than his own. These two difficulties would be met by the Niyoga, *i.e.*, by substituting a temporary intercourse of the widow with her brother-in-law for a permanent one. The offspring of such connection was declared son and heir to the deceased husband of his mother, and immediately on his birth the mother obtained the control over his estate, which she was allowed to keep till he came of age. It is true that Vasishṭha states no appointment shall be through covetousness, *i.e.*, through a desire to obtain the estates. But this is precisely one of those prohibitions affording a glimpse into the real state of things which the Indian moralists tried in vain to alter.

The question as to traces of polyandry in the law-books.

As the Niyoga may thus be traced to its origin in the patriarchal family system of ancient India, it is not necessary to connect it with those survivals of polyandry which have been detected in the ancient epic literature of India. On the other hand, I am not prepared to deny that polyandrous customs are actually referred to in the law-books as well as in the epics, I do not mean the Nārada-smṛiti, though I found that before coming to India I have been represented as a strenuous adherent of the polyandrous theory, on the strength of a somewhat ambiguous passage in my English translation of that work.[1] That passage, I may be allowed to observe, had never been referred to before as an argument in favour of that theory, not even by its most jealous advocates, and I have myself attacked the entire polyandrous theory in several papers published both before and after my translation of the Nārada-smṛiti. But I have been led recently to reconsider my views by the investigations of Professor Bühler, who has pointed out to me that a certain sort of polyandry is referred to in two different Smṛitis. Apastamba (II. 10, 27, 2—4) speaks of the forbidden practice of delivering a bride to a whole family (Kula). Bṛihaspati refers to the same custom in the same terms. Both Āpastamba and Bṛihaspati are known to be averse to the practice of Niyoga, but it is obviously something quite different from Niyoga that they are referring here. The statement attributed to Bṛihaspati occurs, as I have found, in a long text in which various forbidden practices, prevailing chiefly in the south of India, are recorded. From this it might be inferred that this custom prevailed among the Dracidian races only, where it obtains even now-a-day. But the text of Apastamba does not warrant this supposition, as it refers to the custom as to an ancient one, which was enjoined by the early sages, but is now obsolete.

Analogies from the laws of other nations.

The discovery of these traces of polyandry[2] in the Smṛitis does not prove, however, that the Niyoga has to be explained in the same way. Recent researches have proved it to be a widely-spread custom, occurring amongst many nations which have never practised polyandry. Distinct traces of its former existence have been discovered, *e. g.*, in the old laws of my own country, Germany. Thus an old law-book of the Province of Westphalia states that an impotent man shall carry his wife out of his house, and shall ask his neighbours to approach her.[3] If his neighbours will not comply with his request, let him send her to the nearest fair and hang a purse filled with his money round her neck. If she return thence relieved, let the devil help her. I must not omit to note that the practical character of many of the legal rules contained in that law-book is liable to considerable doubt. The curious law just referred to never has been enforced, but the idea underlying it is very old, and corresponds exactly to the Indian Niyoga. Before passing to adoption in the proper sense of the term, I will briefly refer to that special form of the Niyoga by which the son begotten in such intercourse is made to belong to two families at the same time. The annulment of the natural relation between the begetter and his son might seem to be an essential feature of Niyoga. Nevertheless, it was held by several writers that the son of the wife (Kshetraja) presents the funeral oblations and succeeds both to his natural father and to the husband of his mother.[1] Others did not recognize the continuance of the (Kshetraja) in his natural family, except when his begetter had no other son than him,[2] or where a special compact to that effect had been made between the two fathers,[3] or where he had been begotten on a widow;[4] or it was said that the son of two fathers (Dvyāmushyāyaṇa, Bījin) succeeds to half of the property only of each of his two fathers.[5] The case of the Dvyāmushyāyaṇa might arise in every kind of adoption, including the case of the appointed daughter. Nevertheless, it is in connection with the Niyoga that it was noticed most early and discussed most fully by the Indian writers.

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[1] Nārada XII. 6.

[2] See, too, Manu IX. 182; Vishṇu XV. 42.

[3] T. Grimen, Weisthumer, III. 22, 27, 48, 77.

Adopted sons in the proper sense of the term.

Of adopted sons in the proper sense of the term, the Smṛitis enumerate and describe five sorts—the son given (Datta, Dattaka), the made or artificial son (Kṛita, Kṛitṛima), the son self-given (Svāyamdatta), the son bought (Boīta), and the son cast-off (Apaçiddha, Apaçiddhaka). Both the son self-given and the son cast-off are such as, being in distress and deprived of the assistance of their parents and other relations, have offered themselves in adoption to a stranger; they take a very low rank in the order of sons with most writers, and so does the son bought, who, of course, could hardly have been rated more highly than a purchased slave. There exists a trace of the artificial son (Kṛitṛima), having been originally acquired by means of a fictive purchase.[6] The (Kṛitṛima) form of adoption, as described in the Smṛitis, may be compared in some respects to the *arrogatio*, or adoption of adult persons, and in other respects to the *adoptio minus plena*, or partial adoption of Roman Law. The Dattaka form consists of the solemn adoption of a boy who has been voluntarily consigned by his natural to his adoptive parents. The ceremonies to be performed on this occasion are described in the Vasishṭha-smṛiti (XV. 1, ii), in Çaunaka's Putrasangrahavidhi and in a Parçishta, in the Sūtra style, to Baudhāyana's Grihya-sūtra. The texts of Çaunaka and Baudhāyana have been published and translated by Dr. Bühler.[1] Nearly the whole of these texts is moreover quoted in the Vyavahāra, Mayūkha and other translated Digests. The following rules may be deduced from these texts and from a number of shorter texts dispersed through the works of the late Jurists, omitting those which are of doubtful authenticity:—1. Adoption shall only take place on failure of sons. 2. The adopted son shall be similar[2] to the adopter, and shall resemble a natural son like his shadow. This is the Roman principle *Adoptio imitatus naturam.* The rules on adoption have been considerably influenced by it both in India and in Rome. 3. In particular, he shall be a near relative, or at least a distant relative, if possible. 4. He shall not be an only son. 5. He may be given by his two parents, or by either of them. Vasishṭha says that the mother cannot give him without the assent of the father. Whether this extends to the widow as well must seem doubtful. 6. The same rules hold good in regard to the adopting parents. 7. The rule that the adopted son should not be more than five years old occurs in a text of doubtful authority. But the definitions given of the Dattaka as opposed to the Kṛitrima son show that adoption in the Dattaka form was, as a rule, confined to one who had not yet arrived at years of discretion. 8. The act of adoption itself consists of the solemn delivery of the child to his new parents, which takes place before witnesses, and should be accompanied by the performance of a sacrifice (Datta-homa) and the recitation of Mantras. 9. The Mantras and ceremonies vary according to the particular Vedic School to which the adoptive father belongs. The effect of adoption is to make the adopted son pass entirely into his adoptive family, and to give him a full right of succession to all members of it.

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[1] Baudhāyana II. R. 3, 18-19; Uçanas (quoted by Cankhalikhita); Kātyāyana.

[2] Yājnavalkya II. 127. [3] Manu IX. 53. [4] Hārīta.

[5] Nārada XIII. 23. [6] Mitāksharā I. 11, 17 note.

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[1] Journ. Beng. As. Soc., Vol. XXXV; Sacred Books, XIV.

[2] Manu IX. 169. Medhātithi explains similar as denoting not one similar in class, but one endowed with qualities suitable to his adoptive family. The other Commentators refer this term to one equal in class (Varṇa) or caste (Jāti), and this interpretation has been adopted by nearly all Digest-writers, in conformity with the usage of their own age.

Early abolition of the Niyoga and other primitive modes of adoption.

10. Where a legitimate son is born afterwards, the adopted son receives a fourth of a share. Though adoption is referred to in the Vedas,[1] the low rank originally assigned to adopted sons in the list of sons, and the high rank universally accorded to the son of the wife, the son of the appointed daughter and other natural sons, renders it highly probable, that in the earliest period of Indian Law the practice of adoption was not often resorted to on failure of male offspring. Gradually, however, the other methods for creating substitute sons fell into disuse, and such an early author as Apastamba (II. 5, 13, 1-2, 11), while nowhere referring to the doctrine of the twelve sons, avows his disapproval of the practice of buying and selling children. Even before the time of Apastamba, another Vedic teacher, Aupajandhani, as quoted by Baudhāyana, had equally opposed the practice of creating substitute sons. These attacks were directed particularly to the Niyoga, as being decidedly opposed to the refined sense of morals of an advanced age.[2] Manu himself, immediately after giving detailed rules regarding the performance of Niyoga, declares it to be a practice fit for cattle only, and restricts it to the case of a virgin whose bridegroom died before consummation.[3] This statement, though obviously a subsequent addition, must have been introduced very early into the Code of Manu, as it is quoted from it by Bṛihaspati. This writer removes the conflict by the usual formula, that the Niyoga is prohibited in the present (Kali) age of sin, and adds generally that the various sorts of sons substitute created by the old sages are now obsolete, though in another text he recognizes the Putrikā as being equal in rank to the legitimate son. The Digest-writers, however, follow the rule laid down in the Adityapurāṇa and by Çunkha that no other sons deserve recognition than the legitimate and Dattaka sons; only they sometimes adhere to a wide interpretation of this rule. Thus it is observed by Kamalākara in the Vivādatāṇḍava that the sons bought, self-given and made (Kṛitrima) have also to be recognized in the present age of the world, on account of their similarity to the Dattaka son.[4]

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[1] The principal instance is the story of Cunahapa, as told in the Litoreya Brahmaṇa and other works.

[2] Apastamba II. 6. 13. 7; II. 10, 27, 2, 7.

[3] Manu IX. 64—70.

[4] (*For the Sanskrit, see Appendix.*)

The Dattakamīmāmsā recognizes the Kṛitṛima son by the side of the Dattaka (I. 65). The compiler of the Dattaka-Çiromaṇi declares this opinion to be generally received among the writers of Western India, the opposite doctrine of the Dattakāchandrikā having come to prevail among the writers of the Bengal School.[1] In the Province of Mithila (Tirhoot) adoption in the Kṛitṛima form is of common occurrence even now-a-days.

The modern law.

The change wrought on the old text law by some of the Modern Writers on Adoption, and the diversity of opinion among these writers, is very considerable. The Courts have recognized this fact to a certain extent. Thus it is now established that in Bombay no consent of her family is required to adoption by a widow, and it is equally admitted that the prohibition to adopt a boy more than five years old, or one on whom the ceremony of tonsure has been performed in his natural family, does not extend to Western India.[2] It is, however, necessary to go much further than the Courts have gone. The Law of Adoption as at present administered has been built up almost entirely on the two treatises of Nandapaṇḍita and Kubera, *alias* Devānandabhaṭṭa. Against this it has been shown in a former Lecture, that these two treatises are far from being the only ones, or even the most important ones, of their kinds, and that they do not possess any authority for Southern India, because their authors were Northerners, not Southerners as has been formerly supposed. In this way a number of doctrines have come to be established which are decidedly at variance with popular practice, especially with the customs and opinions prevalent among the inhabitants of Southern India. Thus the Dattakamīmāmsā (V. 56) and Dattakāchaṇdrikā (II. 17; VI. 3) declare the performance of the solemn rites prescribed in the old texts to be essential to constitute a valid adoption. But the Daityanirṇaya, which is professedly based on the usages of the South, and has acquired very high authority in the Dekhan, pronounces to the contrary.[3] The opinion that an adoption is valid without such ceremonies is equally expressed or implied in the Langākshibhāskara, and Kamalākarā recognizes popular practice to be to the

No formalities required.

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[1] Dattakaçiromani, 132.

[2] Mayne, §§ 99. 123. and 124.

[3] See the Translation of the Dvaityanirṇaya on Adoption, Mandlik, 54—56. See, too, above p 156.

same effect, though he opposes this practice on principle.[1] The Dattakādarpaṇa[2] declares the performance of the Homa and other ceremonies unnecessary where the person to be adopted is a near relation, and grounds this proposition on a text of Yama from the Sarasvatīvilāsa (not in the printed edition of the Dāyabhāga from the Sarasvatīvilāsa) to the effect that the performance of Homa is not necessary in the case of a daughter's son or a brother's son, a mere verbal transaction being sufficient to establish the validity of the act. The term "a brother's son" in this text, says the Dattakadarpaṇa, includes Sapiṇdas, but in the case of Samanodakas, Sakulyas and Sagotras, the Homa and other ceremonies have to be performed. It is obvious that under this rule the Homa and other ceremonies may be generally dispensed with in an adoption, as nothing is more common than to adopt a near relation. The Dattakanirṇaya[3] declares an adoption performed without Homa to be valid in the case of Çūdras. The authorities quoted in favour of the validity of informal adoptions in the Dattakamundī,[4] include Maheçvara's Commentary (Ṭika), Bhavadeva's Dāyakatā, the Vevādachangarṇava, etc. It is true that the author of the Dattakamundī does not approve of this view. Jagannatha's dissertation regarding the superfluousness of Homa may be found in Colebrooke's Digest.[5] Most of the remaining works on adoption, such as the Dattakadidhīti, Dattaçiddhaṇtamaṇjari[6] and Sanskārakaustubha, confine themselves to stating the ceremonies to be performed by members of the different Vedic Schools, such as Rigvedins and Yajurvedins. This, of course, can apply to members of the Brahman caste only, and it might be argued, therefore, that these writers tacitly recognize the adoption of Çūdras as valid without any formality being performed. Nirṇayasiṇdhu,[7] it is true, directs that the customary rites shall be performed by a Brahman in the case of women and Çūdras, as they are not permitted to perform themselves.

Omission of ceremonies.

It appears thus that opinions have long been divided about the necessity of the customary rites to constitute a valid adoption. It may be presumed, however, that those writers even who hold the stricter view in regard to this subject would not have objected to a subsequent performance of the Homa and other rites, where they had been omitted at the time of adoption, or to the removal of this mistake by a light penance. The rules regarding the creation of a Putrikā afford a parallel to informal adoption.

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[1] Mandlik, 509.
[2] Dattakaçiromani, 243-244, 258. 3
[3] *Ibid.* 238-239 ; 258. 2.
[4] *Ibid.* 245-246.
[5] V. 4, cclxxiii.
[6] Dattakaçiromani, 258. 3.
[7] Cole. ed., p 183.

Restrictions in regard to age.

The restrictions in regard to the age of the person to be adopted have been partly dropped in Western India, but as they are being strictly maintained elsewhere, it will not be out of place to examine the state of authorities on the subject. The principal text is from the Kālikapurana. It states that no boy should be adopted on whom the ceremony of tonsure has been performed in his natural family, or who is more than five years old. However, this text is declared to be spurious, or otherwise explained away in the Mayūkha (IV. s. 20), Dattakāchandrikā (II. 20—23) and other works, and few writers go the length of rigidly enforcing either of those two restrictions as to the age of the person to be adopted. Thus the two rules are fully recognized in the Dattakamīmāmsā. On the other hand, the Nirṇayasindhu permits the adoption of one more than five years old, provided that the ceremony of investiture or initiation (Upanayana) has not been performed for him in his natural family.[1] Dattakamundī admits initiated persons even to adoption, but states that such a person becomes a son of two fathers (Dvyāmushāyaṇa) in consequence of his adoption, and that uninitiated persons are fitted to be adopted than the initiated. The Dattakatilakā does not consider marriage even as a bar to adoption, in case the person to be adopted belongs to the same (Gotra) as the adopter; only the author of this work is careful to add, that one more than five years old must not be adopted against his will. The Dattakasiddhāntamanjarī declares that it is not lawful to adopt a married man, but that one initiated, or more than five years old, may be adopted, though adoption before that age is preferable.[2] The Samskārakanstubha[3] does not recognize any restriction as to age, even in the case of those who belong to a

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[1] See Mandlik, 58. 4. 471-72. In Kamalākara's Vivādatāṇḍava. the text from the Kalikāpurana is repeatedly quoted with approval; but he refers from that work to his earlier composition. the Nirṇayasindhu, as containing a full exposition of his opinion on this subject. Besides, as adoption in the Kṛita, Svayamdatta and Kṛitrima forms is recognized as legitimate by Kamalākara, it seems to follow that the adoption of grown-up persons must be permitted in his opinion. See *ante*, pp. 156-57, note.

[2] See Dattākaçiromani, 119, 2—5.

[3] Benares MS.

LECTURE VII.

different (Gotra) than the adopter. Modern practice in the Native States seems to correspond to this.

Adoption of a daughter's son and a sister's son.

As regards the prohibition to adopt certain near relatives, there exists certainly a strong feeling against the adoption of a daughter's son and a sister's son, except in the case of Çudras, where it is permitted under a text of Vṛīddha-Gautama. The views expressed about this point in the Dattakamīmāmsā are shared by other writers, such as, *e.g.*, the authors of the Dattakakaumudī, Dattakadidhīti, Dattakanirṇaya,[1] Samskārakaustubha. Some of these works state, moreover, that the adoption of a brother's son by a sister is equally prohibited. This prohibition is a natural complement of the preceding one, and both rules are clearly traceable to the well-known Indian principle, that the property should never be allowed to go out of the family It may, however, be argued that this principle should give way to the more general principle directing the adoption of distant relatives on failure of near kinsmen. Besides, the validity of the prohibition to adopt a daughter's or sister's son is more than doubtful as far as Southern India is concerned. There is an elaborate argument against it in Çankara's Dvaityanirṇaya, and the opinion of Çankara has been adopted by his son Nīlakaṇṭha in his well-known composition, the Mayūkha (IV. 5, 11, 36), and by Kṛishnabhaṭṭa in his Commentary on the Nirṇayasiṇdhu.[2] It is expressly observed by Çankara and Nīlakaṇṭha that their personal opinion corresponds to established usage, and it is worthy of remark that the text of Çaunaka, on which the opposite doctrine is principally rested, does not occur in the Southern version of Çaunaka's Putrasangrahavidhī, which has been published by Professor Bühler.[3] Others attribute the same rule to Nārada, but it does not occur in either of the two versions of the Nāradasmriti.

Prohibition to adopt one whose mother the adopter could not have married.

The general prohibition to adopt certain relations, as far as it is enforced in the Courts, rests chiefly on the rule established by Sutherland, that no one can be adopted who might not have been the legitimate son of the adopter by a legal marriage with his mother. However, a close examination of the original authorities shows that there is very little if anything in the Sanskrit treatises to warrant the formation of such a rule as this.[1] The whole question turns on the real import of a somewhat obscure passage in Nandapaṇḍita's Dattakamīmāṃsā. Nandapaṇḍita has apparently borrowed the elements of his theory from the Dattakāchandrikā, and has literally transcribed from that work (II. 8) the sentiment that those only are capable of being adopted who might have been begotten by Niyoga and the like. This is an inference drawn from the principle that adoption imitates nature, and that the adopted son ought to resemble a natural son. The reason why connection by Niyoga is referred to, would seem to be this—that the fittest person to be adopted is a brother's son, just as the temporary intercourse called Niyoga has the procreation of a brother's son for its more ordinary object. Nandapaṇḍita has connected this theory with the prohibition to adopt a daughter's son or a sister's son, and has developed a general theory of forbidden relationship in adoption, which he compares to forbidden relationship in marriage. This, however, is nothing but an analogy. It is one thing to speak of one who is unlike a son and another thing to exclude everyone from adoption whose mother the adopter might not have legally married.

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[1] Dattākaçiromaṇi, 119, 2—4.

[2] Burnell, Tanjore Catalogue; Mandlik, 56 note, as to popular practice in Southern India. See Nelson's view of the Indian Law, 90.

[3] See above, p. 157.

Supposing even the reading translated by Sutherland to be correct, which is doubtful, it was apparently not connection by marriage; but connection by Niyoga, which Nandapaṇḍita had primarily in view. He[2] agrees on this point with his predecessor Kubera.

With whom is Niyoga possible?

This being the true theory of Nandapaṇḍita, the next point for inquiry is, who are the relatives with whom connection by Niyoga is possible? His opinion on this point may best be gathered from his earlier work, the Vaijayantī, where he says that the persons eligible for Niyoga are successively a brother, or a Sapiṇḍa, or a

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[1] See Mandlik, 481.

[2] Nandapaṇḍita speaks of "connection by Niyoga and the like" (Adi). This "and the like" might be referred to connections of a different sort. But the Commentator of the Dattakamīmāṃsā says it relates to the bestowal of a fee on the Brahman who has been invited to perform Niyoga. See Dattakaçiromani, 226. Further on Sutherland's translation is inaccurate, and the reading on which it rests suspected. See Mandlik, *ibid.* It has to be observed, however, that the new Benares edition (p. 25) and a good Puna MS. of the Dattakamīmāṃsā which I have consulted, show the same reading as the late edition (p. 33).

Sagotra, or any member of the Brahman caste.[1] This being the case, it would follow, *e.g.*, that a Brahman might adopt the son of a Vaiçya woman, because any Brahman may be appointed to raise offspring to the widow of a Vaiçya. Yet this would be opposed to one of the fundamental rules of the Modern Law of Adoption as taught by Nandapaṇḍita himself, *viz.*, that no member of a different caste can ever be adopted. Other contradictions between the Niyoga theory and the ordinary rules regarding adoption have been noticed by N. V. Mandlik.[2]

The Vaijayantī on adoption.

It has to be observed, moreover, that the Vaijayantī (XV. 19), which contains a short resumé of Nandapaṇḍita's opinions on the subject of adoption,[3] does not refer to this rule at all. This shows more clearly than anything else can, how little store Nandapaṇḍita set on it himself.

Niyoga obsolete.

Finally, the custom of Niyoga, as shown before, was obsolete even in the time of some of the oldest Smriti-writers. Its obsolete character is recognized to the fullest extent in the Dattakamīmāmsā (II. 64—68). If, therefore, Nandapaṇḍita makes use of this obsolete custom in order to justify his own opinions in regard to a different practice, it is no better than if in modern Europe a judge would try to settle a question regarding the offspring of an illicit connection by a reference to the *jusprimæ noctis.* If

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[1] See the author's note to his translation of the Vishṇu-smṛiti. 61-62. Nandapaṇḍita's opinion regarding the eligibility of all members of the Brahman caste to be appointed, which appeared to be the views of Vijnaneçvara, is grounded on the text of Vishṇu (XV. 3) and on an analogous text of Gautama (XVIII. 6).

[2] *Ibid.* 482—83.

[3] The following rules are laid down in the Vaijayantī:—(1) A son may be given in adoption by both parents, or by the mother alone with the consent of the father. Thus according to Vasishṭha XV. 1-2, 5; Vishṇu XV. 19; Manu IX. 168. The text of Manu directs either that the son shall be given in distress only or to one who has no son himself. (2) No one can adopt who has a son living—Manu, *ibid.* (3) No only son shall be given in adoption (Vas. XV. 3, 4); nor an eldest son, under the text of Caunaka ज्येष्ठं पिता । (4) The two last rules do not apply to a brother's son—Vishnu XV. 42. (5) For the rites in an adoption, Vasishṭha XV. 6 is quoted. (7) A brother's son is the most eligible person to be adopted—Vasishṭha XV. 7, 8. (9) The rite of giving a son is "identical with the rite to be performed in making a Putrikā, as described by Jābāli." It may be observed that the prohibition to give an eldest son in adoption does not occur in the Dattakamīmāmsā, though it is found in many other treatises. In the Mitāksharā, Sarasvatīvilāsa, etc., it is rested on a text of Manu (IX. 106), in other works on the anonymous text न ज्येष्ठं पुत्रं दद्यात् ।

Nandapaṇḍita's theory had been more than a speculative development, it must have found entrance into all the principal treatises on adoption. Instead of this, it is only in a few other works of recent date—*viz.*, in the Dattakākaumudī, Dattakādidhīti, Dattakānirṇaya, Samskārakaustubha—that a doctrine of this kind is noticed at all; and the authors of these works even confine themselves to general remarks about forbidden relationship and persons unfit to be considered as sons.

Dvyámushyáyana Adoption.

Its origin.

The so-called Dvyāmushyāyaṇa Adoption, by which the adopted son retains at the same time his status in his natural family, affords another instance of the way in which the obsolete custom of Niyoga was introduced into the Law of Adoption by the later Jurists. It has been pointed out before that the earliest texts, in which the position and rights of the Dvyāmushyāyaṇa, or son of two fathers, are considered, related to the case of the Niyoga alone. The various doctrines of the Smṛiti-writers on this subject, which were repeated and developed in the Commentaries, appear to have furnished the principal basis of those lengthy disquisitions on the result of an adoption in this form, which are to be found in the Treatises on Adoption both of the Northern and Southern Schools. In particular, it had been a point of contention very early, whether a Kshetraja son becomes a Dvyāmushyāyaṇa, wherever his natural father has no other son living, or merely in consequence of an express stipulation. The same question was raised accordingly in the case of an adopted son. Thus it is declared in the Dattakāchandrikā (II. 37-38) and Mayūkha (IV. 4. 28—35), that in order to constitute a true Dvyāmushyāyaṇa, a stipulation is required at the time of adoption to the effect that the boy shall belong to both fathers. The same opinion is expressed in such an early work as Medhātithi's Commentary on Manu.[1] The Vivadātāṇḍava, on the other hand, contains an important passage in which a stipulation of this kind is declared an absurdity. The adopted son, says Kamalākara, inherits to his natural father without any previous stipulation, in case he is his only son.[2] That stipulations of this sort were practically unknown in Southern India at all events results from a statement quoted in the Mayūkha.[3] "There is no rite prescribed for an agreement to the effect that the son shall belong to both fathers." I have been informed by Pandit Duṇḍiraj of Benares, that in the N. W. Provinces also adoptions of the Dvyāmushyāyaṇa type are very common now-a-days, though express stipulations to that effect are as unknown as the term Dvyāmushyāyaṇa.

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[1] l. on IX. 142. (*For Sanskrit, see Appendix.*)

[2] (*For Sanskrit, see Appendix.*)

[3] IV. 5, 28 ; Mandlik, 61.

Conclusion.

The result of this brief review of some of the principal doctrines of the Indian Law of Adoption may be summed up in a single sentence: It is simply a misfortune that so much authority should have been attributed in the Courts all over India to such a treatise as Nandapaṇḍita's Mīmāmsā which abounds more in fanciful distinctions than perhaps any other work on adoption, and it is high time that the numerous other Treatises on Adoption should be thoroughly examined and given their due weight. Even hitherto, in spite of the pressure exercised by the authority of Nandapaṇḍita, the prevailing tendency of decisions has been in favor of divesting adoption of arbitrary restrictions, which have no foundation in equity and justice. The history of adoption in some of those European countries where adoption has been sanctioned by Legislation offers a parallel to this.

LECTURE VIII.

UNOBSTRUCTED INHERITANCE.

The right of representation — The principle of spiritual efficacy proved to be erroneous — 1. Female and maternal ancestors — 2. Operation of the Right of Primogeniture on Cráddhas — 3. Cráddhas addressed to remote ancestors — 4. Son and grandson — 5. Introduction of females into the order of heirs — 6. Sapiṇḍa derived from Piṇḍa, a body — 7. Propinquity the test of succession — 8. Persistency of this doctrine in the Mitákshará School — 9. Viçveçvara and other writers of this School — 10. The Dáyabhága doctrine — 11. Germs of the Dáyabhága system in earlier writings — 12. Influence of the Bengal system on the other Schools — Division of the Law of Inheritance — Unborn descendants — Primogeniture — Abolition of the Right of Primogeniture — How to settle the order of seniority between sons of different wives — Intermarriage prohibited — Rights of the offspring of mixed marriages — Subsidiary sons — Primogeniture among subsidiary sons — Competition between subsidiary and legitimate sons — The modern law — Share of the adopted son where a legitimate son is afterwards born — After-born sons in the case of the Dvyámushyáyaṇa — Right of representation — Illegitimate sons of Cúdras — Medhátithi's opinion — 1. Meaning of Dásí — A permanent concubine — 2. Meaning of the term 'half-a-share' — 3. Competition of illegitimate sons with daughter's sons, etc. — Course to be adopted — Descendants of an emigrant heir — Conclusion.

The right of representation.

THE Indian Law of Inheritance, with all its singularities and shortcomings, possesses one highly commendable feature which entitles it to one of the first ranks among all the divers systems of inheritance of the ancient world. I mean the thorough development which has been accorded to the principle of representation in India. Among sons of different fathers, say Vishṇu (XVII. 23) and Yājnavalkya (II. 120), the adjustment of the shares shall be made according to the fathers. This is precisely the principle which has passed from Roman Law into the legal systems of Modern Europe, that inherited property, as a rule, shall be distributed *per stirpes*, and not *per capita*. In India, the exceptions to the right of representation—such as, *e.g.*, the exclusion of the more remote descendants, beginning with the fourth in descent, and the rule that where a divided householder has nephews only, the adjustment of the shares shall be *per capita*—are comparatively few and unimportant. Representation takes place even in the dis-

LECTURE VIII.

tribution of inherited property between the sons and grandsons of one man, and what is more, the sons of one excluded from inheritance on account of physical or moral defects or civil incapacities succeed to his share and represent him just as if he were dead. The legal systems of some of the most highly civilized nations of Europe have taken centuries to arrive at the simple and equitable rules devised by the Indian Lawgivers of old. The ancient Teutonic Laws do not know the right of representation at all, and it was not till after a long struggle, observable in the *coûtumes* of Germany and Northern France, that the Law of Representation began to gain ground with regard to the heirs of a deceased owner.[1]

The principle of spiritual efficacy

The right of representation has originated in the patriarchal family system, and it is that system which really lies at the bottom both of the Roman and of the Indian Law of Inheritance. No doubt the Indian rules on inheritance are closely connected with the rules relating to the offering of funeral oblations as well. This is a common characteristic of all early systems of inheritance. But the theory that a spiritual bargain regarding the oblation of the customary offerings to the deceased by the taker of the inheritance is the real basis of the whole Indian Law of Inheritance, is a mistake which has arisen in the early period of the Administration of Hindu Law from a too exclusive study of the writers of the Bengal School, and from certain terms often recurring in Colebrooke's translations of Indian law-books, notably from the term "connected by funeral oblations," the English equivalent chosen by Colebrooke for the well-known Sanskrit term 'Sapiṇḍa.' This theory has now been given up so far that a difference of doctrine in this respect between the Bengal writers and those of the other schools has been recognized. But it is necessary to go further than this. As the question regarding the relation of the Law of Inheritance to the rules regarding the customary Çrāddhas is of particular importance for a right understanding of the entire history of the Indian Law of Inheritance, a brief review of the main points of difference, which have

proved to be erroneous.

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[1] In regard to a living man, the whole period of the middle ages adhered to the principle *Vivinulla repræsentatio est.* See Professor Kohler, in the *Kritische Vierteljahrschrift* for 1880.

existed between both sets of rules from the first, or have sprung up successively, will not be deemed out of place.

Female and maternal ancestors.

1. The wives of ancestors and the maternal ancestors receive Çrāddhas from persons who seldom or never inherit from them. Thus it is stated in such old works as the Açvālayana and Kāṭhaka[1] Grihyasūtras, that at the invocation of the three immediate ancestors (Sapiṇḍas) their respective wives shall receive a separate ball of rice each. Yet the persons whose duty it was to offer these Çrāddhas would not have inherited anything from their respective mothers, grandmothers and great-grandmothers, because in the Sūtra period women were not considered capable of holding any property excepting perhaps their Strīdhana, which, after their death, would pass in the female line only in those times. The maternal grandfather, and his father and grandfather, are another group of persons entitled to the receipt of Çrāddha oblations in every case, though their descendants in the female line can never inherit from them, unless descendants in the male line should be wanting. The obligation to offer Çrāddhas to the maternal grandfather and to his two immediate ancestors, is specially mentioned in the Vishṇu and Yājnavalkya Smṛitis, and in a text ascribed to Pulastya.

Operation of the Right of Primogeniture on Cráddhas.

2. Among several brothers, the eldest only offers the Çrāddhas, but all brothers have an equal right of succession. It is true that a Right of Primogeniture has formerly existed in the Law of Inheritance as well: but it has been abolished in the Law of Succession, while it was maintained in the Law of Çrāddhas.

Cráddhas addressed to remote ancestors.

3. The ordinary Çrāddha offerings are addressed to the three ancestors, and the inheritance devolves, in the first place, on the three descendants of one deceased. It is to these three generations in the ascending and descending lines that the name of Sapiṇḍas, or persons connected by the funeral ball, was originally restricted. Thus Baudhāyana says (I. 5, 11, 9): The great-grandfather, the grandfather, the father, oneself, the uterine brothers, the son by a wife of equal caste, the grandson, (and) the great-grandson,—these they call Sapiṇḍas, but not the (great-grandson's) son. The obligation to offer three balls of rice at a Çrāddha, one

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[1] The passage from the latter work has been printed in the author's paper on the Vishṇu-smṛiti and Kāṭhaka Gṛihyasūtras,—Transact. R. Bav. Acad. of Science, 1879.

to each ancestor, is clearly stated in the Çrauta and Gṛihya-sūtras. However, there exists a difference of opinion as to whether all these ancestors, in order to be entitled to the receipt of Çrāddhas, must have departed life or not. Both opinions found adherents, but it appears that the doctrine which made the decease of an ancestor the necessary condition of any worship being shown to him became victorious in course of time. Now the consequence of this doctrine would have been to increase the number of ancestors to whom Çrāddhas might be due by substituting, *e.g.*, for a grandfather who was still alive, his deceased grandfather,—*i.e.*, the great-great-grandfather of *præpositus*, and so on. Such rules as these may be actually found in the Manu and Vishṇu Smṛitis. Thus it is stated by Vishṇu (LXXV. 2, 4) that one whose father and grandfather are alive must offer Çrāddhas to those persons to whom his grandfather offers his Çrāddhas,—*i.e.*, to his own third, fourth, and fifth ancestors. One whose father is dead, but whose grandfather is alive, must offer Çrāddhas to his father and to the two ancestors coming before his grandfather, and so on. These rules make the Çrāddha extend eventually to the fourth and fifth generations, whereas the order of heirs invariably stops and turns back at the third male in descent.

Son and grandson.

4. Though the vested right to inherit is extended to the fourth generation by such an early writer as Baudhāyana, there are several traces of a narrower view by which this right was restricted to the son and grandson, and it is in one of the most recent metrical Smṛitis only,—*viz.* Devala's,—that the great-grandson's right is as distinctly recognized as it is by Baudhāyana. Kātyāyana lays down the same rule in the case of undivided estates only.[1] Several well-known *versus memoriales* regarding the religious merit gained by the birth of a son, grandson or great-grandson, have no special reference to inheritance, though they are quoted in the Dāyabhāga Sections of the Manu, Vishṇu, Vasishṭha, Çankhalikhita and other Smṛitis.[2] Under these circumstances it is no matter of surprise that two such recent works as the

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[1] In the Mayūkha (IV. 4, 23) and Vivādatāṇḍava (MS.) both the texts of Devala and Kātyāyana are referred to reunited coparceners only. This, however, is a forced interpretation.

[2] Manu IX. 137 ; Vishṇu XV. 46 ; Vasishṭha XVII. 5, &c.

Mitāksharā and Madanapārijāta refer to the right of the son and grandson alone.[1] These writers might be supposed to have omitted the great-grandson for brevity's sake, but in the Law of Debt also, the liability to pay debts contracted by an ancestor stops with the grandson. There is every reason to suppose that, in the Law of Inheritance also, the exclusion of the great-grandson from the narrower community of heirs by Vijnāneçvara and Viçveçvara is intentional, and not accidental.

Introduction of females into the order of heirs.

5. The recognition of the capacity to inherit in females, especially the introduction of the widow into the order of heirs, must have destroyed effectually that close connection between inheritance and funeral oblations which had caused the nearest male heirs to be designed, in an earlier period, by terms taken from the community of funeral oblations. Besides, the denomination of Sapiṇḍas, from embracing originally three immediate ancestors, three immediate descendants and *præpositus*, had early been extended by making the traditional seven Sapiṇḍas to reach as far as the seventh generation both in descent and ascent. Thus the real import of the term Sapiṇḍa came to be forgotten, and we find that

Sapiṇḍa derived from Piṇḍa, 'a body.'

6. Vijnāneçvara and other authors derive Sapiṇḍa from Piṇḍa, 'body,' and take it to mean those who have particles of one body in common. This of course is a thoroughly artificial etymology, which is, however, characteristic as showing that, in the times of Vijnāneçvara, the origin of the Institution of Sapiṇḍas in the Law of Çrāddhas was no longer recognized even by the learned.[2]

Propinquity the test of succession.

7. Vishṇu (XV. 40) says: He who inherits the wealth presents the funeral oblation (to the deceased). Statements of this kind, which are rather common both in the Smṛitis and in the later juridical literature of India, might occur and do occur in Roman and Greek, just as well as in Sanskrit literature. It is ordained by religion, says Cicero, that the family estate and the family worship shall never be separate, and that the care of the sacrifices shall always devolve on him who takes the inheritance. Isalus, the well-known Athenian pleader, says: Please to consider

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[1] West & Bühler, 67-68. The Madanapārijāta introduces the well-known text of Yājnavalkya on the order of heirs as follows: "The order of heirs to a divided man, who has departed for heaven without leaving *sons or grandsons*, will be stated next."

[2] F. de Coulanges, La cité antique, p. 76.

well, judges, and to decide whether myself or my adversary is to inherit the estate of Philoktemon and to offer the funeral oblations on his tomb.[1] Among an essentially religious people like the Hindus, a confusion of thought in regard to the original relation between the obligation to offer Çrāddhas and the right to succeed might spring up more easily than elsewhere. The person who, after the death of a kinsman, came forward to perform the Çrāddhas for him, and was allowed to do so by common consent, might claim the deceased man's property afterwards by virtue of this fact. In the language of some Smṛiti-writers, he might offer the Piṇḍa and (then) take the property. But although the competence to offer the funeral oblations might thus be popularly considered as a test of the right of succession in ordinary cases, the facts adduced above show that it never was a reliable test in cases of difficulty. When, therefore, the scientific study of law had been established, it was at once declared in the Mitāksharā that propinquity is the only real test of the right of succession.

Persistency of the Mitákshará doctrine.

8. An interesting passage of Bālambhaṭṭa's or Lakshmīdevī's Commentary on the Mitāksharā contains two successive lists of relatives, the first representing the order of heirs, and the second the order of those on whom it is incumbent to offer the Çrāddhas to their deceased kinsmen. Both enumerations differ as strongly as possible; the wife, for example, coming in immediately after the subsidiary sons in the first list, but not till after the brother, father and daughter's son in the second list. Bālambhaṭṭa argues in very strong terms against the notion that the right to inherit and the duty to offer the obsequies go together, and show that it is not the competence to offer Çrāddhas, but the propinquity to the deceased, which creates the title to succeed to his property.[2] It is true that, according to other works of the Mitāksharā School, *e. g.*, in the Dharmasindhu of Kāçīnātha, the order of heirs agrees more closely with the order of persons competent to offer Çrāddhas than it does according to Bālambhaṭṭa. However, the Dharmasindhu,[3]

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[1] F. de Coulanges, La cité antique. p. 76.

[2] A perfectly literal rendering of this whole passage may be found in Rajkumar Sarvadhikari's Lectures. pp. 484-485, who gives it without a comment, though it is diametrically opposed to his own theory of the competence to offer Crāddhas as being a certain test of a preferential right of succession.

[3] See *ibid.* pp. 100--115.

in enumerating the persons competent to perform Çrāddhas, introduces the son's widow, the sister, and the sister's son after the father, which is entirely opposed both to the letter and spirit of the Mitākshарā Law of Inheritance.

Viçveçvara and other writers of the Mitákshará school.

9. Other writers of the Mitāksharā School, though they do not go into detail so much as Bālambhaṭṭa and Kāçīnātha, who are among the most recent writers of this school, insist very strongly on the correctness of the general principles enunciated in the Mitāksharā. Thus the earliest Commentator of the Mitāksharā—Viçveçvara—has refuted, in the Introduction to the Second Stabaka of the Madanapārijāta, the derivation of Sapiṇḍa from Pinda, "funeral ball." He has also endeavoured to show that it is impossible to found a consistent theory of succession on the community of funeral oblations.[1] The Mitāksharā doctrine is likewise upheld by Nīlākaṇṭha (Samskaramayūkha), Kamalākara (Nirṇayasindhu), Anantadeva (Samskarakaustubha), Vachaspatimiçra, Çūlapāṇi and other eminent authorities.[2]

Dáyabhága doctrine.

10. The doctrine that the order of succession is determined by the greater or less amount of the spiritual benefits conferred on the deceased proprietor has been first worked out by Jīmūtavāhana, and has since become an established doctrine in the Bengal School, but not outside of it. Even in the Bengal School, however, this principle has hardly been developed with sufficient clearness and precision to admit of establishing, by virtue of it, the claim of any heir not expressly named in the Bengal Treatises on Inheritance. Probably the Bengal lawyers have not introduced the principle of spiritual efficacy for its own sake, but merely in order to support by it the claims of a certain number of cognates to the inheritance, in accordance with the established practice of their own time and country. The definition of inheritance in the Dāyabhāga, though differing from the Mitāksharā, contains no reference to funeral oblations and the benefits conferred by them, and inheritance is treated in this school, as in the other schools, as a part of the more comprehensive subject of partition of common property.

Germs of the Dáyabhága sys-

11. The elements of the Dāyabhāga doctrine are, no doubt, very old, and may have been derived by Jīmūta-

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[1] See Rajkumar Sarvadhikari's Lectures, pp. 609—611.
[2] *Ibid.* 611—614, 619—624.

tem in earlier writings.

vāhana, in this case as in other cases, from Aparārka's or some other old Commentary of the Yājnavalkya or Manu Smṛitis. Aparārka, as will be seen in the next Lecture, regulates the order of precedence among the agnates according to the number of ancestors to whom both the deceased and the claimant have to offer funeral oblations. This is a development of the old theory of Sapiṇḍaship as including those connected by the community of oblations,—*viz.*, primarily four males in descent and ascent, and then the three next ancestors and descendants. This theory, which had been enunciated by Manu, was persistently maintained by his Commentators from Medhātithi downards. Another predecessor of Jīmūtavāhana—Devaṇṇabhaṭṭa—in the Smṛitichandrikā (Sanskārakaṇḍa) equally derives Sapiṇḍa from Piṇḍa, "funeral ball," and establishes two divisions of Sapiṇḍaship, each including three degrees, under a well-known verse from the Matsya-purāṇa. But none of those writers, who have put forth the principle of spiritual efficacy before the times of Jīmūtavāhana, has made use of it for the purpose of introducing the cognates as heirs between the agnates. Nor, it appears, was that strict distinction between the three first Sapiṇḍas and the three last denominated Sakulyas, and the establishment of different kinds of Sapiṇḍaship, for impurity caused by death and for marriage purposes on the one hand, and for succession on the other hand, in vogue before the composition of the Dāyabhāga.

Influence of the Bengal system on the other schools.

12. The Bengal system, carefully worked out as it is, did not fail to exercise a certain influence on the opinions held in the other Schools of Law. This influence seems to exhibit itself, *e. g*, in the doctrine of Nandapaṇḍita and others that there are two kinds of Sapiṇḍaship, one resting on consanguinity, and the other on community of funeral oblations. The Vīramitrodaya, while attacking the principal points of Jīmūtavāhana's theory, recognizes some subordinate portions of it, as will be seen in the next Lecture. The principal feature of the Bengal system, however, I mean the insertion of the cognates, has never received the assent of any writer of the Mitāksharā School. It is true that nearly all the later writers of this School have extended the vested right to inherit before the widow, etc., to the fourth generation. But this deviation from the Mitāksharā doctrine had been forestalled in such an early work as the Commentary of Aparārka, and though it may

be partly due to the importance attributed to the performance of Çrāddhas, it may be sufficiently accounted for as a simple consequence of the Indian family system, the custom of early marriages rendering it far from uncommon in India that a man at the time of his death should have great-grandsons living.

Civil death.

Apart from the regard paid to Crāddhas, and the competence to offer them, the religious tendency of the Indian mind has manifested itself very clearly in two other Institutions relative to inheritance. I mean the rule that an estate escheats not only on the natural death of its owner, but also on his expulsion from caste, or on his entrance into a religious order. All heavy offences in India are not visited with secular punishment alone, but they entail expulsion from caste, and one formally expelled from caste by the ceremony of Ghaṭṭasphoṭa, "the smashing of the pot," is divested of his entire property, which passes to his next-of-kin or coparceners. In most cases, indeed, degradation may be averted by performing the penance prescribed, and by the Act of the year 50 the civil consequences of degradation have been entirely removed. The legal consequences of entrance into a religious order have also been restricted considerably by the Courts. It may be noticed in connection with what has been said before about succession, that, in all cases of civil death, the right to inherit is quite independent of any obligation to offer funeral oblations. Çrāddhas could hardly have been performed till after the natural death of the persons concerned, and outcasts in the Smriti period did not even receive Çrāddhas after their natural death.[1]

The three parts of the Law of Inheritance.

From these general remarks I will now pass to the details of the Law of Inheritance, which, according to the sex of the deceased proprietor, may be divided into two main parts—succession to males and succession to females. The radical difference in the principles of succession to males and to females did not remain unnoticed by the Jurists of India, and each Digest contains a special Chapter on the Law of Succession to Female Property. But the main division of the Law of Inheritance in the Mitāksharā, and those works which follow it, is into unobstructed inheritance (Apratibandadhaya) and obstructed inheritance (Sapratibhandadaya). Unobstructed inheritance, according to the now prevailing doctrine, exists in case of sons, grandsons and great-grandsons, who are heirs presumptive from the moment of their birth. Obstructed inheritance exists in the case of all the more remote heirs, as being heirs-at-law only, and liable to be cut out at any moment by the interposition of a nearer relative. This division of the Law of Inheritance is not referred to by the writers of the Bengal and Mithila Schools, and it has been discarded in the English manuals, but it may be conveniently retained in a historical sketch of the Indian Law of Succession to Males. An exposition of its general principles has been given before. Unobstructed succession will form the subject of the remainder of the present Lecture.

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[1] Vishṇu (XXII. 57) ordains that. on the death-day of an outcast. a female slave shall upset a pot of water with her feet. This rule appears to have been framed on the analogy of the ceremony of Ghaṭṭasphoṭa.

Unborn descendants.

It should be added to what has been said, that a son, grandson or great-grandson, who is *en ventre sa mère* at the time of death of the owner, has the same right as one actually born. This principle is enounced in one of the Smṛiti fragments, and has been universally adopted by the later Jurists.

Primogeniture.

Primogeniture in India, as in many other countries, occurs in noble and princely families only in the present day. The privileges accorded to the eldest son in an undivided family have been discussed in a former Lecture. Equally interesting survivals of the Law of Primogeniture may be traced in those various systems of unequal distribution of the family property according to the order of seniority which are proposed in the earlier Smṛitis[1] and are traceable to the Veda.[2] The importance attached to this subject in the Code of Manu appears from the copious discussion devoted to it at the commencement of the Chapter on Inheritance, in which even the order of precedence among twins has not been forgotten. But the most archaic mode of unequal distribution is that described in some of the Dharmasūtras. Thus it is ordained by Baudhāyana, that the additional share of the eldest son shall consist of a cow, a horse, a goat and a sheep respectively, according as he belongs to the Brahman, Kshatriya, Vaiçya or Çūdra castes. Vasishtha states that the eldest shall take a double share and a tithe of the kine and horses; that the youngest shall take the goats, the sheep and the house; and that block iron, the utensils and the furniture shall belong to the middlemost. Analogous regulations may be found in the Dharmasūtras attributed to Gautama. It seems clear that these rules, which savour of the pastoral and agricultural habits of a primitive people, belong to an older order of ideas than those modes of division by which the amount of each share or additional share is fixed arithmetically. Such modes of division are mentioned optionally with the other modes quoted before in the Dharmasūtras of Baudhāyana, Gautama and Vasishtha, but the most characteristic rule of this kind occurs in the Code of Manu (IX. 112) to the effect that the additional share of the eldest shall consist of a twentieth part of the inheritance, together with the best of all the chattels, that the youngest shall similarly receive an eightieth part, and that those between these two shall receive a fortieth part as their additional share. The infinitesimal value of the eightieth part of an estate and the difficulty to define its exact amount is obvious. There are several other modes of division still besides those hitherto mentioned, such as that the eldest shall take the best of all kinds of wealth, as well as that which is the best in its own kind and the best of every ten head of cattle; that the eldest shall receive the largest, and the youngest the smallest, share, the remainder being equally divided among the other brothers, etc.

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[1] Baudhāyana II. 2, 3, 3—9; Vasishṭha XVII. 42—45; Gautama XXVIII. 5—13; Vishṇu XVIII. 37; Nārada XIII. 13; Apastamba II. 6, 13, 13.

[2] Taittirīya Samhitā II. 5, 2, 7.

Abolition of the Right of Primogeniture.

This great variety is undoubtedly due to diversity of local and family usage, and shows how deeply the idea of Primogeniture and of the privileges due to senior brothers had taken root in the Hindu mind. Nevertheless, it was diametrically opposed to another principle of the Indian Law,—*viz.*, that all coparceners have an equal interest in the common property, and that even the right of the father and of the sons to ancestral property is perfectly equal. It is not surprising, therefore, to find that such an early author as Ápastamba has entered into an elaborate defence of the equal right of all virtuous sons to the inheritance, though he acknowledges the existence of local customs by which either the gold or black cattle or black produce of the earth, *i. e.*, block grain or iron, is the share of the eldest. The fragments of Hāritā's Dharmasūtra contain two conflicting statements. According to the one, the shares in a partition after the father's death shall be equal; according to the other, the younger sons shall leave to the eldest the household deities and the family mansion, and build houses of their own. Brihaspati, while stating in one place that the first by birth, by science and by good qualities, shall obtain a double share, recognizes in another place the existence of two modes of division, one equal and the other unequal. Yājnavalkya (II. 117), Uçanas and Paiṭhīnasi ordain emphatically that the partition of the paternal estate among brothers shall be in equal shares, and in two Smṛiti or Purāna texts, the partition, with deductions, is reckoned among the things prohibited in the present (Kali) 'age of sin.' This has become the established doctrine in all the schools, and the statements of the leading authorities show that their teaching on this head corresponded to the popular feeling of their own epoch and to the opinion of the very earliest Commentators, such as Dhāreçvara (Bhojarāja) and Viçvarūpa.[1]

How to settle the order of seniority between sons of different wives.

As polygamy is permitted by the Indian Law, and as the first married wife ranks before those married later, the question might arise whether the eldest son by birth was to enjoy in every case the privileges of Primogeniture, or whether a younger son, by the wife first married, might come to be preferred to an elder son by a junior wife. This question is apt to arise even now in the case of an impartible Rāj or Zemindary, and although the decision in a case of this kind will be given in accordance with family usages rather than with the written Law of the Smṛitis, it is interesting to note the attitude taken by the latter in regard to this problem.[2] Gautama proposes three different solutions of it: either the additional share of the eldest son shall consist of one bull only in case he was begotten on a junior wife, and of sixteen bulls in case he is the son of the first wife; or he shall share the estate equally with his younger brothers born of the first wife in the former case; or the eldest son of each mother shall receive as his additional share a certain definite part of the property descending to himself and his uterine brothers. Manu has discussed the same question, and, as far as his meaning can be made out, he proposes two answers to it: either the son of the first married wife, though younger, shall get an excellent bull as his additional share; or the Right of Primogeniture shall follow the date of birth alone, just as in the case of twins, the first-born is considered as the elder of the two. The latter view, say the Commentators Medhātithi and Rāghavānanda, represents Manu's own opinion.[1]

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[1] See Smṛitichandrikā III. 16—24.

[2] See Mayne, § 462.

Intermarriage prohibited.

The right of intermarriage between different castes belongs, like the Law of Primogeniture, to the things prohibited in the present age of the world, and though this part of the law is treated more or less copiously in most Digests, *e. g.*, in the Mitāksharā, Vīramitrodaya, Mayūkha, Mādhavīya and Dāyabhāga, without referring to its obsolete character, it is clear that the authors of these works in taking this course had completeness for their only object.[2] Kamalākara, in the Vivādatāṇḍava, says, that he "does not think it necessary to discuss the rules of partition between sons sprung from mothers of unequal caste, because the marriage with such women is prohibited in the present age by a text of the Aditya-Purāṇa. Analogous statements might be collected from several other works.

Rights of the offspring of mixed marriages.

The earlier Smṛitis generally take a more liberal view of the legitimacy of mixed marriages, but they differ as to the legality of marriages contracted by members of the three higher castes with a member of the Çūdra caste. Accordingly, the proportionate shares of the inheritance of sons of a Brahman father born of women of the four castes are ordinarily stated to stand to one another in the relation of 4 : 3 : 2 : 1.[3] Vasishṭha, however (XVII. 47—50), who does not give his sanction to marriage unions with a Çūdra woman, makes the proportion to be 3 : 2 : 1. Vishṇu (XVIII. 1—40) has worked out the former principle with great care, taking into consideration the case that the father should be of another than the Brahman caste, or that there should be several sons or none of one particular caste, and so on. Manu (IX. 149—151) mentions another mode of division also, which is specially favourable to the son of the Brahman wife, who is to obtain by it a servant, a bull, a horse or carriage, ornaments and the family mansion, and three shares of the remaining property; whereas the son of the Kshatriya wife gets only two shares, etc. Gautama mentions a mode of division which is propitious to the interests of the sons of Kshatriya and Vaiçya wives.[1] The son of a Çūdra wife, on the other hand, is viewed with special dislike even by those authors who admit his legitimacy, and should he even be an only son, he is never allowed to take the whole property left by his father. Thus it is ordained by Vishṇu, that an only son born of a Çūdra wife shall only take half of the inheritance, the other half descending in the same manner as the property of one deceased without male issue. Manu, while giving in one place the before-mentioned rules for partition of an estate between the son of a Çūdra woman and the sons of women of other castes, says in another place (IX. 154-155) that a father shall never give more than a tenth to a son born of a Çūdra wife, and that such a son has no vested right to inherit and shall keep as much only as has been given him by his father. In a third place (IX. 160), Manu mentions the son of a Çūdra woman as the last of the six inferior sorts of sons who are never to be considered as heirs.[2] These conflicting statements represent the different stages by which the rigid caste-system of the present day has developed itself. Baudhāyana also, though treating in one place of the distribution of the inheritance among sons of women of all the four castes, mentions the son of a Çūdra wife or concubine as the last of the inferior sons, who shall be members of the family only, and not heirs (II. 2, 3, 29, 32). Gautama (XXVIII. 39) denies the son of a Çūdra woman any right save a claim to maintenance; and similar statements may be collected from most other Smṛitis, especially from the Smriti fragments. As for sons begotten on women of higher castes by men of lower castes, it is stated in such early works as the Dharmasūtras of Vishṇu (XV. 37—39) and Gautama (XXVIII. 45) that they can claim nothing but a maintenance, and the same rule is given by Kātyāyana. And Āpastamba (II. 7, 13, 1—5), far more strict than his brethren as usual, does not recognize the right of any son except those who have sprung from parents of equal caste, which shows how early the opposition to mixed marriages must have begun.

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[1] Dr. Mayr (Ind. Erbrecht, 53-54) thinks that the two rules (M. IX. 123 and 125) do not contradict one another, as Pūrvaja in 123 may denote the eldest son of all sons, and tadūnānām the eldest son of each wife. This interpretation is supported by one MS. which reads सर्वपूर्वजः the eldest son of all. But all the other MSS. read स पूर्वजः Nārāyaṇa tries to remove the contradiction between 123 and 125 by referring the latter rule to questions of etiquette only, such as formal salutations. Kullūka brings in the difference between virtuous and vicious sons.

[2] See Burnell. Introd. to Dayavibh., p. xiv.

[3] Manu IX. 152-153; Baudh. II. 2, 3, 10; Yājn., II. 125; Nār. XIII. 14.

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[1] Gaut. XXVIII. 35—38. See also Baudh. II. 2. 3, 12.

[2] The Commentators have endeavoured in vain to remove these contradictions by referring to the difference in point of dignity between the son of a Çūdra wife and a Çūdra concubine, a virtuous and a vicious son, etc.

Subsidiary sons.

From the Law of Primogeniture and the rules of partition between sons by women of various castes, I pass to a third topic of the Law of Inheritance, which is likewise in a great measure obsolete, though some parts of it have remained in force in the present day. The divers subsidiary sons have been discussed before in connection with the subject of adoption, and it has been pointed out that all of them are obsolete now excepting sons adopted in the Dattaka or Kritrima forms alone. The rights of the Paunarbhava, "son of a twice-married woman," have been restored quite recently by the English Legislation. Some minor points connected with the substitution of sons according to the ancient law remain for discussion.

Primogeniture among subsidiary sons.

First as to the operation of the Law of Primogeniture on the rights of the subsidiary sons.[1] The general rule is this, that the Law of Primogeniture can only apply between sons of one and the same class. Thus the eldest of several Kshetraja sons may claim an additional share, but a single Kshetraja son shares equally with his begetter, who happens to be his father's younger brother; and a Putrikā shares equally with a legitimate son born after her appointment. To the sons of a Çūdra, however, the right of seniority shall never be applied; they shall divide the paternal estate equally, should there even be a hundred of them.[1]

Competition between subsidiary and legitimate sons.

That a legitimate son is superior in rank to all subsidiary sons follows from the nature of the case and from the definition of a legitimate son as given by Manu and others.[2] But what has to be done in cases of competition between a legitimate son and a substitute? Vishṇu (XV. 30) says, that the legitimate son shall support the other sons. Vasishṭha (XV. 9) refers to the case of the adopted

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[1] Manu IX. 120-121, 134, 157; Devala.

[2] See Manu IX. 166: Baudh. II. 2, 3. 14; Vas. XVII. 13; Vishṇu XV. 2; Yājn. II. 128; Devala (Vīramitr., 101, etc.) Baudhāyana is the only author who has introduced equality of caste between the parents into his definition of the legitimate (Aurasa) son. The Commentators and Digest-writers—Kullūka, Rāghavānanda, Vijnāneçvara, Çūlapāṇi, Nīlakāṇṭha and others—supply this in the texts of Manu and Yājnavalkya as well, in order to make them agree with Baudhāyana's definition. But Mitramiçra, in the Vīramitrodaya, and Nandapaṇḍita, in the Vaijayantī, refute this construction. Manu (III. 12, 13, 44), Vishṇu (XXIV. 1—8), Yājnavalkya (I. 57, 62) and others recognize expressly the legality of marriages contracted with women of unequal caste, and describe the rites to be observed in such marriages.

LECTURE VIII. son only, who, he says, shall receive a fourth part of the inheritance, in case a legitimate son should be subsequently born to his adoptive father. Baudhāyana (II. 2, 3, 11) lays down the general proposition that the subsidiary sons of equal caste shall receive one-third of the estate in that case. The same rule is given in a text attributed to Brihaspati or Devala or Nārada, and in a text assigned to Kātyāyana. According to another reading, Kātyāyana speaks of a fourth part. Vriddha Gautama, as quoted in the Dattakamīmāmsā (V. 43), Dattakachandrikā (V. 32), and in Krishṇapaṇḍita's modern gloss on the Vasishṭha-smṛiti, states that the adopted son shall share equally with an after-born legitimate son. The other Smṛitis, in which the same question is treated, make the relative dignity of each subsidiary son the standard by which the amount of his share is regulated. Thus it is stated by Manu (IX. 134, 164, 163) that the son of a Putrikā shall share equally with an after-born legitimate son of the body (Aurasa): but the son of the wife (Kshetraja) shall only receive a fifth or a sixth share, and all the other sons shall have a claim to maintenance merely. Hārīta prescribes that the damsel's son shall receive a twenty-first part; the son of a twice-married woman, a twentieth part; the son of two fathers,[1] a nineteenth part; the son of the wife, an eighteenth part; and the son of a Putrikā, a seventeenth part; the remainder being given to the legitimate son of the body. The Brahmapurāṇa ordains a share for each of the eleven subsidiary sons in order, from the son of the wife, who shall obtain a third part of the inheritance, down to the son of a Çūdra woman, who shall obtain a thirteenth part. Such rules as these are mere theories of course, and could never have been enforced. They express the various opinions of their authors in regard to the relative dignity of each class of sons, nothing else.

The only rule now in force is that which assigns a third or fourth part of the estate to the adopted son, where a legitimate son has been afterwards born. The latter rule is mainly founded on the text of Vasishṭha quoted before, and it is worthy of remark that this text is followed by another clause referring to the case that the adopted son is grown up and able to offer the family sacrifices at the time when the legitimate son was born. Vasishṭha, as explained by his Commentator Krishṇapaṇḍita, states that, in this case, the property shall be divided equally between the adopted son and the legitimate son. This is precisely what Vriddha Gautama prescribes in the passage adduced before; but as this text is explained away in the Dattakāmīmāmsā and Dattakāchandrikā, while the second text of Vasishṭha, where it is quoted,[1] has a totally different reading, the law regarding the equal division of the estate between those two sons has never obtained. This may be regretted, as this rule appears to correspond to actual practice in some parts of India, and is certainly more equitable than the established rule.

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[1] Thus Nandapaṇḍita (Vaijayantī), Haradatta (Mitāksharā, Ujjvalā), Mitramiçra. Jagannātha (Dig. V. 4, ccxix) has the son of concealed birth instead.

To speak of an established rule in this case is indeed a rather bold figure of speech, as the variance of doctrine is very considerable.[2] (1) Those texts which make the share of the adopted son a third, are relied on by the leading writers of the Bengal School; and those which make it a fourth, are relied on in the Benares, Bombay and South Indian Schools. Nandapaṇḍita has followed the latter doctrine in his Treatise on Adoption, the Dattakamīmāmsā; but in the Vaijayantī (XV. 30), where the same subject is treated at more length, he takes an intermediate course, making the application of the two rules to alternate, according as the adopted son is more or less virtuous. Much the same course is adopted in the Dattakāchandrikā and Vivādachintāmaṇi. (2) The Dattakāchandrikā makes the adopted and legitimate sons to take equal shares in the case of Çūdras. (3) The terms "a third share" and "a fourth share," exactly as in the analogous case of the fourth share allotted to a daughter,[3] have been variously explained as denoting a part of the whole, or a part of the legitimate son's share, or a part of what the adopted son would have taken had he been a legitimate son. The last interpretation is rather harsh on the adopted son. Supposing the two legitimate

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[1] The Benares Edition of Vasishṭha, on which Dr. Bühler's translation is based, has युक्तः स्यात् । The Vivādachintāmaṇi (p. 150) and Dattakachandrikā (p. 78) have प्रयुक्तः स्यात् and प्रयुक्तं स्यात्, the former reading being a misprint for प्रयुक्तः as the sequel shows (*Sutherland*) :—"Provided (the estate) may not have been expended in acts of merit (by the legitimate son)."

[2] Mayne, § 157; W. Macnaghten, I. 70.

[3] See *ante*, pp. 179—182.

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sons were subsequently born, the adopted son would take one-twelfth under this interpretation; and supposing the number of after-born sons to be four, the adopted son would take one-twelfth only. The first interpretation represents the *primâ facie* view of the matter, and it seems to lie at the bottom of the other rule, under which the adopted son is to take one-third only,—*i.e.*, one-third of the legitimate son's share, but a fourth of the whole.[1] However, supposing there were four after-born sons, the adopted son's allotment would be greater than the share of a natural son, which is not consonant with equity. In my opinion, the second interpretation has the best chance of succeeding, whenever the case may arise for final decision. The arguments speaking in favour of this construction of the law are the same as in the case of the fourth share of a daughter. As regards equity, this rule avoids both the Scylla, of depressing the adopted son's share to an infinitisimal amount, and the Charybdis, of making it exceed the shares of the after-born legitimate sons, where there are, *e.g.*, four or five of them. The state of the authorities in the present case is this. The Sarasvatīvilāsa is decidedly in favour of the construction here proposed. The language of the Sarasvatīvilāsa (§ 379) on the subject is unequivocal, and it quotes an anonymous Smṛiti text, stating that in case of a legitimate son being subsequently born, the Datta, Kṛitṛima and other sons shall take a fifth share. The weight of this statement in settling the law in the Madras Presidency has been acknowledged by the High Court of Madras. The same rule has been followed in Bombay, on the authority of a Çāstrī. It must be owned, it is true, that the language of all the other authoritative works is just as ambiguous in this case as in the case of the fourth share to be allotted to a daughter. As regards the Dattakamīmāmsā (V. 40), there exists moreover a difference of reading, which renders it impossible to get at the real meaning of the rule laid down in this authoritative treatise.[2] According to Sutherland it may mean, that the adopted son shall take a fourth of what he would have got had he been a legitimate son. He seems to have translated the reading of the Benares Edition, which may mean just as well, however, that the "fourth share" shall be a fourth of what the legitimate son actually takes. According to the reading of the Calcutta Edition, the adopted son is selected to take a fourth part of the whole property. Besides, if Nandapaṇḍita were to be followed on this question in Benares, it would be equally necessary to establish the rule laid down by him in the Vaijayantī that the adopted son shall take a third or a fourth part of the property, according as he is endowed with more or less virtue,[1] and I hardly think that such a plea as this would be likely to succeed. In the Bengal School the adopted son is given a third, instead of a fourth, part. But here again the same difficult finally arises, as may be seen from Dāyabhāga (X. 7) and Dāyakramasangraha (VII. 23). The main current of decisions in the Bengal School appears to be in favour of making this third part a third of the whole, though a good deal may be said against this view of the matter.

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[1] Mayne, § 157.

[2] The Calcutta edition, p. 35, reads (*For the Sanskrit, see Appendix.*) The Benares edition, p. 26, reads (*For the Sanskrit, see Appendix.*) The same reading has been found in a good MS. of the Dattakamīmāmsā.

After-born sons in the case of Dvyámushyáyaṇa.

The Dvyāmushyāyaṇa, after whose adoption male offspring is born both to his natural and adopted fathers, shall take a quarter share, just as other adopted sons, under the Mayūkha (IV. 5, 25). The case of after-born sons existing in one of the two families only is not referred to anywhere except in a difficult passage of the Dattakachandrikā (V. 33).[2] This passage, according to Sutherland's translation, refers to both of the two cases which may thus arise. It is equally possible, however, that it refers to one case only, and declares that where a legitimate son is afterwards born to the natural father, the Dvyāmushyāyaṇa son shall take half of his natural brother's share, and likewise half of that share which is due by law to an adopted son, where a legitimate son is afterwards born.

Right of representation.

The right of the offspring of adopted sons down to their grandsons, and of the adopted sons and grandsons of legitimate sons, is not expressly declared, but it follows from the right of representation.

Illegitimate sons of Cúdras.

On failure of sons, grandsons and great-grandsons, legitimate or adopted, illegitimate issue down to the great-grand-

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[1] That it is a legitimate method to explain the Dattakamīmāmsā with the aid of Nandapaṇḍita's earlier work, the Vaijayantī, is shown by his own example. There are cross-references from the one work to the other.

[2] Calcutta edition, p. 81.

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son inherits the property of a Çūdra according to the modern law. In the higher castes, illegitimate offspring has a claim to maintenance only, and the indulgence shown to illicit connexions in the case of Çūdras must be traced to the same cause as the before-quoted rule of Manu, that the Law of Primogeniture does not apply to Çūdras, the partial or total prohibition of marriage with Çūdra women, the low position assigned to the offspring of such marriages, and all those numerous rules, in short, in which the contempt and dislike of the Brahmanical lawgivers towards the Çūdra caste has exhibited itself. Thus, in treating of the various marriage forms, the Smṛitis state that the lowest forms, which consist of purchase and seduction of a maiden, are put for Çūdras. In one Smṛiti it is said that Çūdras being serfs are not particular about their wives, *i.e.*, that they exercise no control over them.[1] This may have been literally true at one time, and if the Çūdras were ever kept in that state of absolute dependence and servitude, which the Smṛitis prescribe for them, their marriage unions could not have been more regular and permanent than they were among the slaves of ancient Rome and Greece, or among the Negro slaves in America. These considerations will account sufficiently for the juxtaposition of men of the Çūdra caste and female slaves in the rule of Manu (IX. 179), that the son of a Çūdra begotten on his female slave (Dāsī), or on the female slave of a male slave, shall, by permission, obtain a share of the inheritance, and in the rule of Yājnavalkya, that a son begotten on a female slave by a Çūdra shall take a share by the father's choice, half a share after the father's death, and the whole property, in case there are no other sons or sons of a daughter. These two texts contain everything that is to be found in the Smṛitis on the subject, but the various constructions put on, and the important rules deduced from, them in the modern works have given rise to several interesting controversies, which I will briefly notice, adverting first to the fortunate circumstance that the copious remarks of Medhātithi on this head have been completely preserved in the MSS. of his ancient Commentary on Manu. They contain the following propositions which deserve special attention both on account of their antiquity and of the

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[1] Baudh. I, 11, 20, 14-15, and note.

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great esteem in which Medhātithi was held by the later Jurists.[1]

Medhátithi's opinion.

1. The term "a Çūdra's son by a Dāsī" means a son begotten by him on a woman neither married to him nor authorized to raise offspring (according to the custom of Niyoga). 2. Such a son shall receive an equal share with a legitimate son, if his father wills it so, and either divides his property in his lifetime or enjoins his legitimate sons to share equally with the illegitimate son after his death. 3. If the father has made no such provision for the illegitimate son, he shall take after the father's death half of the share allotted to each legitimate son. 4. If there is no legitimate son, nor daughter's son, he shall take the whole property. 5. A daughter's sons, where there are any, shall be treated like legitimate sons as regards their shares of the inheritance.

1. Meaning of Dásí.

As for the modern controversies, the first and most important one concerns the meaning of Dāsī. It has been contended in a Bengal decision, that it means "a female slave" in the strictest sense of that term, and slavery being abolished under British Rule, it would follow that the whole law under notice is obsolete. It is quite certain, however, that the Commentators and Çāstrīs have persistently explained the term Dāsī as including any unmarried female of the Çūdra caste. To the evidence tending in this direction, which may be collected from the translated works and from Bombay and South-Indian cases, I may add the before-quoted statement of Medhātithi and the remark of Kamalākara in the Vivādatāṇḍava, that the text of Manu refers to the son begotten by a Çūdra on an unmarried Çūdra female.[2] In a Bengal case it was pointed out that the two corresponding passages of the Dāyabhāga have not been correctly translated by Colebrooke.[3] But though I think every Sanskritist will readily agree to the proposition that the second passage, as it stands in the Calcutta Edition of the Dāyabhāga of 1829 (p. 222), has not been accurately rendered, and that the Sanskrit compound of which the first passage consists might perhaps be dissolved otherwise than has been done by Colebrooke, it is clear that Jīmūtavāhana does not differ in the least from his brethren on the point in dispute. I propose to modify Colebrooke's translation very slightly in the first case, by putting "The son of a Çūdra by a female slave or other unmarried Çūdra woman;" and in the second case to translate as follows: "Having no brother begotten on a married woman, he (meaning the son of a Dāsī) may take the whole property."

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[1] Gloss on IX. 179. (*For the Sanskrit, see Appendix.*) (Yajn. II. 134a) (*For the Sanskrit, see Appendix*): "They shall take two shares each, and give him one"

[2] (*For the Sanskrit, see Appendix.*)

[3] See Mayne, § 463. Both in Colebrooke's and in Mr. Justice Mitter's translation the important word Cūdra, a female Cūdra, is omitted. Should there be a variation of reading? But the term "an unmarried Cūdra female" forms the connecting link between this and the preceding paragraph of the Dāyabhāga (IX. 28).

A permanent concubine.

It has also been suggested that the term Dāsī can only denote a permanent concubine, and does not include public women or adulteresses. It certainly seems far from equitable to treat the son of a concubine on the same footing as the offspring of promiscuous or adulterous intercourse. On the other hand, there can be no doubt that the term Dāsī may mean a prostitute, in the language of the Indian Commentators.[1] In South India it is very commonly used in order to denote the consecrated female dancers attached to Pagodas.[2]

2. Meaning of the term "half a share."

2. The rule of Yājnavalkya, that in a division after death with his legitimate brothers the illegitimate son shall take half a share, is repeated in all the Digests. Here the same difficulty arises in the case of the fourth shares of a daughter and of an adopted son. The term "half a share" is defined in the passage quoted before from Medhātithi's Commentary as denoting one-half of what is actually allotted to a legitimate son. According to this principle, which has been proposed by some Bombay Çāstrīs as well, where there is one legitimate son, the property is divided into three parts, of which the illegitimate son takes one; where there are two legitimate sons, the illegitimate son takes a fifth part, and so on. The statements of the authoritative works are not equally clear. They may be either explained in accordance with Medhātithi's doc-

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[1] Thus, in the Mitāksharā (Calcutta edition of the II. part, p. 378), the term Dāsī in a text of Yājnavalkya is explained as "wives who live by illicit intercourse with men, prostitutes and the like.

[2] Burnell, Introd. to Dayavibh., p. xiv; Mayne, § 463.

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trine, or they may mean that an illegitimate son shall take half of what he would have obtained as a legitimate child. But the former explanation seems preferable, both on account of the general considerations adduced before in the two analogous cases of the daughter and of the adopted son, and on account of the authority belonging to Medhātithi's Commentary. The statements of the authoritative works are not equally clear. They may be either explained in accordance with Medhātithi's doctrine, or they may mean that an illegitimate son shall take half of what he would have obtained as a legitimate son. But the former explanation seems preferable, both on account of the general grounds adduced previously in the analogous cases, and on account of the authority belonging to Medhātithi's Commentary.

3. Competition of illegitimate sons with daughter's sons, etc.

3. Where legitimate sons (or grandsons, or great-grandsons) are wanting, the illegitimate son, as stated before, shall take the whole estate. This rule, however, operates on failure of daughter's sons only; and in cases of competition between daughter's sons and illegitimate sons, the property shall be equally distributed between them. Thus far the Bengal School[1] and Kamalākara in the Vivādatanḍava.[2] The Dattakachandrikā (V. 30, 31) however says, that the existence of any of the heirs down to the daughter's son,—*i.e.*, the widow, the daughter and the daughter's son,—may operate as a bar to the illegitimate son's right, and that he must share equally with any of these. A third opinion is delivered in the Mitāksharā and Sarasvatīvilāsa, §§ 395—397, to the effect that the heirs barring the legitimate son's right to the whole inheritance are the daughter and daughter's son, and that the mode of division in this case shall be the same as before—*i.e.*, the illegitimate son shall take half as much as a legitimate son. The same mode of division is proposed by Medhātithi, and it is far from improbable that Vijnāneçvara in this as in other cases may have consciously followed that ancient author. All the other authorities, such as the Mādhavīya, Vīramitrodaya, Chintāmaṇi, Mayūkha, Pārijāta, etc., do not express themselves

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[1] Dayabh. IX. 31 ; Dayakr. VI. 32—35 ; Dig. V. 3, clxxiv.

[2] (*For the Sanskrit, see Appendix.*) On failure of brothers and of daughter's sons, let the son begotten on an unmarried woman take the whole; and half of the inheritance, when a daughter's son is in existence.

distinctly either about the heirs who take jointly with the illegitimate son, or about the amount of their interest in the estate.

Course to be adopted.

An eminent author[1] has proposed to follow the opinion of the Dattakachandrikā as being the one most consonant with equity. It must be owned, indeed, that the exclusion of the widow under the two other systems seems a harsh proceeding. But it has been justly urged by Messrs. West and Bühler, though not in connection with this subject, that Vijnāneçvara, by introducing the illegitimate son's claim into the Section on Unobstructed Property (Apratibandhadāya), meant to show that the rules regarding obstructed inheritance were not strictly applicable to it. The special favour shown in this instance to the daughter's son by Yājnavalkya, and to the daughter and daughter's son by Vijnāneçvara, may be a relic of the time when the rights of these two heirs stood higher than the widow's.[2] Altogether the safest course would seem to be this, to adhere to an absolutely literal interpretation of the Mitāksharā Law on the one hand, and of the Bengal Law on the other hand, leaving aside the Dattakachandrikā as being an authority on the Law of Adoption only, and the Vivādatandava as being overruled by the Mitāksharā. In the case of an undivided householder, the illegitimate son's right to inherit may be supposed to attach directly on failure of legitimate descendants, as the daughter's son can claim to a separate householder's property only.[3]

Descendants of an emigrant heir.

On failure of legitimate, adoptive or, in the case of Çūdras, of illegitimate descendants down to the fourth degree, undivided property passes to a coparcener returning from abroad. This law is founded on a text of Brihaspati, to the effect that a coparcener, by going abroad, does not forfeit his share of whatever property held by him in common with his coparceners, and that his right passes to his descendants as far as the seventh degree, who, on returning, shall take a share of the property divided in their absence, and without their knowledge, provided that they can make good their descent from the original coparceners. This rule affords a remarkable instance of the strength of the family principle in India, and of the great care of the Hindu Law in providing for the claims even of the remotest descendants to the common family property. On the other hand, though the text of Brihaspati is quoted wholly or in part in many authoritative Digests, it is rendered nugatory by the facilities for communication offered in the present day, and it has entirely lost its validity through the Act of Limitation of the year 1871. LECTURE VIII.

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[1] Mayne, §§ 465-466.

[2] West & Bühler, pp. 81—88.

[3] *Ibid.* 72.

Conclusion. According to the just observation of the Indian Jurists, the law just treated forms an exception to the general rule, that succession stops and turns back at the fourth in descent. The other heirs, who come after the fourth in descent, fall under the head of Obstructed Inheritance, which will be treated in the next Lecture.

LECTURE IX.

OBSTRUCTED INHERITANCE.

The Smṛitis — Females excluded — Females as heirs — Half-blood — Cognates — Reunion — Modern Law — Widow: 1. She must be a Dharmapaṭní. 2. Chastity. 3. Restrictions on her power of disposal. 4. Other limitations. 5. Divided estates — Other heirs — Several widows — Daughter-in-law— Daughter — Special rules—Growth of these rules — Daughter's son — The son of the daughter's son — Daughter's daughter — Parents — Priority of the mother — Stepmother — Brothers — Grandmother. — Half-blood — Nephews — Sisters and nieces — Sons of the same mother — Grand-nephews — Remote kindred — Mitákshará system — Banḍhus — More than nine Banḍhus — Smṛitichandriká — Order of precedence among the Banḍhus — Bengal system — Exclusion of females in the Bengal School, and in the Smṛitichandriká and Víramitrodaya — Females admitted to succession — Mayúkha — Mitákshará — An objection refuted — Strangers — Succession to an hermit, etc. — Reunion — Extent and importance of reunion.

The Smṛitis.

OBSTRUCTED inheritance has been a subject for contention long before the times of the Mitāksharā and Dāyabhāga. Each of the standard Smṛitis has a list of its own of the heirs to one leaving no male issue down to the grandson or great-grandson, and the variety of doctrines embodied in these numerous lists is almost endless. The principal points of difference, however, appear to be the following:—

Females excluded.

1. Nothing can be more characteristic than the Introduction of Females into the order of heirs in some Smṛitis, and their total or partial omission in others. The degraded position of women in ancient India precludes entirely the idea of their having been regarded as heirs of the family-property in early times, and several early writers have actually quoted a text from the Veda, in which the general unfitness of women for heritage seems to be pronounced.[1] This

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[1] This text is taken from the ritual of the Soma offerings, and declares in reality that women are not entitled to a portion of these offerings. See West & Bühler, 126 note; Bühler, Baudhāyana II. 2, 3, 46 note. In Baudhāyana's Dharmasūtra and in Yāska's Nirukṭa (III. 4), this text is referred to inheritance. The first clause of the text, as quoted by Baudhāyana, is clearly an interpolation.

principle is still adhered to by the authors of the Dharmasūtras, excepting Vishṇu, and the exceptions to it, which are admitted in some of these works, are few and unimportant. Thus the right of the daughter as an heir is referred to by Apastamba (II. 6, 14. 4), but he gives her an optional right merely, and places her behind all the other heirs, excepting the King. Gautama (XXVIII. 24) names as heirs to one deceased without male issue: Sapiṇḍas, Sagotras and the wife.[1] However, it is the apposite remark of the Commentator, Gautama does not mean to constitute the wife an heir by this text. All he means to say is this, that the distant kinsmen shall either take the whole property and provide for the widow, or, if that is not feasible, shall set apart for her maintenance and clothing as much of the landed or other property as will suffice for the purpose, and take the remainder for themselves.[2] Manu mentions the mother and grandmother vaguely as heirs (IX. 217), but in his list of those persons who are heirs in succession to one leaving no male issue, females have no place. Nārada assigns (XIII. 50) a high rank in the order of heirs to the daughter, but he does not admit any other female to succession. In nearly all the other metrical works, and in the Vishṇu-smṛiti, the mother, daughter and widow figure among the heirs, though their precise position is not settled.

Females as heirs.

The same difference of opinion as to the right of females has been noticed in the Law of Partition, and there can be no doubt that, from the time of the Dharmasūtras to the period of the metrical Smṛitis, a considerable change of popular feeling must have taken place in regard to the proprietary right of females. The right of the mother and of the daughter appears to have been recognized more early than the claim of the widow to succeed to the estate of her late husband; the position of the mother as shown in a former Lecture was superior in dignity to the position of any other female family member, and the daughter had acquired a claim to the inheritance even in the time of the Dharmasūtras in those parts of India where the custom of making her a Putrika was in vogue. As regards the widow, one way to provide for her in early times was by marrying her to one of the brothers or other relatives of her husband, who took the inheritance, or to a stranger; but this practice was opposed to the Puritan spirit of the Brahmanical writers. The Niyoga has been explained as another mode of providing for the widow. When the remarriage of widows and the Niyoga were abolished, the widow's right to inherit seems to have developed by the successive stages indicated in the commentary on Gautama. At first the heirs were at liberty either to maintain her or to set a certain portion of the property apart for her maintenance. Then they had to leave a part of the estate at her disposal in every case. The last step would be to give her the entire property. This important right, however, according to most Smṛiti-writers, does not accrue except under certain restrictions, such as that the late husband must have been divided in estate from his coparceners, that the widow must remain chaste and obedient to her guardians, that she must offer the customary Çrāddhas, and must not waste the property, etc.

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[1] The reading " strī cha *and* the wife" has been adopted by Professor Stenzler in his edition, and by Professor Bühler in his translation, of Gautama. It is vouched for by the standard commentary of Haradatta, by the same writer's commentary on Apastamba by Nandapaṇḍita's Vaijayantī and other Commentaries. The reading "strī vā, *or* the wife." which would give her a nearer claim to the inheritance than the other reading, is found in several copies of the text and in the Mitāksharā, Vīramitrodayā, Dāyabhāga and other Digests. An analogous text is quoted from the Dharmasūtra of Paiṭhīnasi or Cankhalikhitā, to the effect that the brothers, parents, or eldest wife shall inherit.

[2] (*For the Sanskrit, see Appendix.*)

Brothers and parents.

2. A *second* point of difference concerns the relative position of the brothers and parents in the order of heirs. Considering the equal nearness of these two kinds of relationship, it is natural enough that the Smṛiti-writers should have been at variance as to the way in which the priority between parents and brothers should be settled. This question, however, does not seem to have arisen till the time of the metrical Smṛitis; or it was too special by its nature to enter into the general plan of a Dharmasūtra, as those subjects only are treated in these early works which have some immediate connection with Dharma, or religion.

Half-blood.

3. The claims of half-blood to the succession are recognized in some of those Smṛitis only which bear evident marks of recent composition, such as the Saṇgraha and the Vṛiddha Manu Smṛiti.[1]

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[1] The difficult text of Yājnavalkya (II. 139), on reunion, which has called forth a host of different interpretations (see Goldstücker, 7-8;

Cognates.

4. Those distant kinsmen, who are referred to as heirs in the early Smṛitis, are designed by general terms only, such as Sapiṇḍas, Sakulyas, Sagotras and the like. One thing seems clear, *viz.*, that one and all of these names, however vague they may be, relate to agnates alone. To prevent the property from being diverted from the family is one of the principal objects of all early systems of inheritance. It is only in some of the metrical Smṛitis and in the Vishṇu-smṛiti, that a class of relatives called Baṇḍhus or Bāndhavas is introduced, and this term, according to its common acceptation, includes both agnates and cognates, but chiefly the latter. In the text of Vishṇu, indeed, Baṇḍhu, in the opinion of the Commentators, is used synonymously with Sapiṇḍa. But in another Smṛiti-text, which is variously attributed to Vṛiddha-Cātātapa and to Baudhāyana, but not found in the Dharmasūtra of the latter, the term Bāndhava is explained to apply to nine cognates specially named.

Reunion.

5. Finally, the Smṛiti-writers have enounced different opinions in regard to the influence of the divided or undivided status of a deceased proprietor on the devolution of his estate. The Dharmasūtras do not seem to recognize any such influence, except so far that Gautama and Vishṇu refer to the status of a Samsṛishṭin, usually translated by one reunited (with his brothers or other) coparceners. The property of such persons, according to them, shall descend exclusively to his coparceners, in case he has left no issue. The same rule recurs in many of the metrical Smṛitis. The term Samsṛishṭin is derived from the past participle Samsṛishṭa, "what is united or joint," and may therefore denote any one who possesses united or joint property. It was originally applicable, no doubt, to all persons however distantly related, who had agreed to live united in interests, and their union was naturally the more close because it rested on a special agreement to the purpose. Bṛihaspatī, however, restricts the denomination of Sam-

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Mayne, § 502; Mayr's Ind. Erbrecht. 134, etc.), is usually referred to the succession of stepbrothers. Aparārka, however, reads (*for the Sanskrit, see Appendix*) and explains "a half-brother, even if united, shall not take the property of a half-brother; a full brother shall take it, though not reunited, but a half-brother never." The correctness of this reading and interpretation is confirmed by Cūlapāṇi and Vāchaspati-miçra.

sṛishṭin to certain near relatives, who, after previous separation, have again become united in interests. Apart from the case of the Samsṛishṭin, which, in modern times at least, is rare, the Smṛitis do not refer to the status of the deceased proprietor except so far that Bṛihaspatī and Kātyāyana do not make the sonless widow's right to the succession to attach, except where her late husband had been divided in interests from his coparceners. These two writers, however, are by no means consistent in their statements about this subject. Thus the widow of a Samsṛishṭin, whose position and rights were closely analogous to those of an undivided coparcener, is expressly called to the succession by Bṛihaspatī.

Modern Law.

Passing over some minor items of difference between the divers lists of heirs as given in the Smṛitis, I turn to the Modern Law of Succession to Obstructed Property, which has been built up in the main on two almost identical texts of Yājnavalkya (II. 135-136) and Vishṇu (XVII. 4—13). The widow is the first heir under these two texts. Nevertheless, her right of inheritance continued to be contested in the time of the Commentators even. Thus we hear of one author who denied the widow's right altogether where it was more than sufficient to defray the expense of maintaining her; of another, who would recognize as heir none but the widow of a separate male, in case she had been appointed to raise up issue to him; of a third, who argued that a widow must not follow her pleasure, but practise austerities, and that, therefore, the inheritance can never devolve on her where the parents and other relatives of the husband are living, etc.[1] Medhātithi, the earliest Commentator of Manu, is also quoted as an adversary of the widow's right.[2] In the authoritative Digests and Commentaries her right is universally acknowledged, but the authors of these works would hardly have found it necessary to enter into such an elaborate refutation of opposite views on the subject, if the point had been quite settled in their time. Besides, they all agree in placing the following restrictions on the widow's right:

She must be a Dharmapatnī.

1. She must have been a Dharmapatnī,—*i.e.*, wife married for the fulfilment of the sacred law. This rule tends to exclude low caste women, because they cannot be admitted

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[1] Mitāksharā II. 1. 8—14, 31—35; Vīram., 142—154; Aparārka (MS.)
[2] Kull. on M. IX. 188.

to the performance of religious ceremonies, together with their husbands; those who have not been married as virgins; and all those women generally with whom no legitimate union has been contracted. The remarriage of widows has been legalized by the British Legislation.

Chastity.

2. Proved adultery operates as a bar to the widow's rights, as will be seen in the Lecture on Exclusion from Inheritance.

Restrictions on her power of disposal.

3. The widow takes a restricted estate only. The nature of the restrictions on a widow's dominion over her estate will be discussed in connection with the subject of Strīdhana.

Other limitations.

4. Some other restrictions on the power of a widow over property inherited from her husband, such as that she has to perform the customary obsequies for him,—that she has to pay his debts,—that she must obey her guardians,—that she must maintain those persons who are a burthen on the estate, and so forth, are either common to the widow with other heirs, or fall under the head of moral rather than legal obligations.

Undivided estates.

5. All these restrictions may be explained as a remnant of that feeling which had prompted the entire exclusion of the widow from inheritance in the early period of the Hindu Law, and to the same cause may be traced that restriction of the widow's right to separated estates which is so characteristic of the Mitāksharā Law. But why was this restrictive rule proposed by Vijnāneçvara, and not by the Bengal writers as well? Textual authority for his opinion Vijnāneçvara gives none, and the texts of Kātyāyana and Brihaspatī, which are quoted in support of Vijnāneçvara's doctrine in later works, do not seem to have been known to him. The only reason assigned by Vijnāneçvara himself[1] for his opinion is this, that division has been discussed previously, and reunion will be treated afterwards. The unsatisfactory character of this reason is obvious. Nor do the other Commentators of Yājnavalkya, Çūlapāṇi, and Aparārka, assent to Vijnāneçvara's doctrine, though Aparārka follows him in his polemics against the opinions of Dhāreçvara and others, and seems to restrict the widow's right to the self-acquired property of her husband. But neither do Aparārka and the Bengal writers agree with

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[1] Mat. II. 1, 30.

LECTURE IX.

the Mitāksharā theory of reunion. Vijnāneçvara looks upon the rules regarding the property of a Samsṛishṭin as forming a thorough-going exception to the general rules for the succession to one leaving no male issue. It was but natural, therefore, that he considered the latter as relating to divided estates only, the case of an undivided coparcener being analogous to the case of a Samsṛishṭin. Another and equally important motive for restricting the widow's succession to the case of a divided person must have been furnished by Vijnāneçvara's peculiar views regarding the heirs to a woman's property. He makes all her property go after her death in that peculiar line of descent which was originally devised for the separate property of a woman only.[1] Under these circumstances it would clearly have been a dangerous proceeding to extend the widow's right of succession alike to divided, undivided and reunited property.

Other heirs.

The restriction of the widow's succession to the case of a divided coparcener represents an innovation on the ancient law as stated in all the Smṛitis excepting two isolated texts attributed to Bṛihaspatī and Kātyāyana. On the other hand, after having once established a radical difference as to succession between divided and undivided estates in the case of a widow, Vijnāneçvara could not but extend this distinction to the other heirs mentioned after her by Yājnavalkya. Thus it has happened that, in the present day, those provinces which are governed by Mitāksharā Law, recognize neither the widow, nor the heirs coming after her, as heirs to an undivided estate. Which other relatives the authorities prevalent in those provinces do recognize as heirs to such an estate, may be gathered from their rules on succession to a reunited coparcener, and on the right of representation. As reunited, so may undivided persons succeed to one another; for reunion, according to the Mayūkha and Vīramitrodaya, may take place between all those persons who had been originally united; and between all reunited coparceners there exists a mutual right of succession which, under Mitāksharā Law, attaches directly on failure of male issue down to the grandson or great-grandson. From the Law of Representation follows the rule that the coparceners inherit *per*

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[1] See Lecture XI.

stirpes. Divided property is taken by the widow and the rest, both under Mitāksharā and Bengal Law, and Succession in Bengal is influenced so far by the deceased proprietor's status, that divided brothers, etc., are postponed to undivided brothers, etc. I will now proceed to notice each of these heirs singly. Subject to their radical difference of opinion as to the applicability of their rules to undivided and reunited estates, there exists a general concurrence between the writers of all schools on most minor questions.

Several widows.

In addition to what has been said before about the widow's right it may be observed that, where there are several widows, they take in equal shares. This is the doctrine of the Mitāksharā, which has been repeated in the Mayūkha, Vīramitrodaya, Smṛitichandrikā, Sarasvatīvilāsa,[1] Vivādatāṇḍava, Vaijayantī and other Digests. The Vīramitrodaya adds, that where there are wives belonging to several castes, those of equal caste take first, and those of a different caste afterwards. The Madanapārijāta states, that wives belonging to the four castes shall take four, three, two shares and one share respectively.[2] These rules[3] have now become obsolete, as intermarriage between different castes has been prohibited. The Sarasvatīvilāsa lays down that, in cases of competition between a wife who has a daughter and a wife who has no daughter, the immovable property belongs to the former alone, whereas the movable property is to be shared equally by both. But where there is no other wife, the wife who has no daughter shall take the entire property. This rule professes to be based on the Smṛitichandrikā, but in reality the case in hand is not distinctly referred to in that work;[4] and if Rudradeva's opinion is to be adopted, it must be adopted on his own authority.

Daughter-in-law.

On failure of the widow, says Nandapaṇḍita, the property of a sonless man is taken by his daughter-in-law, and not by his daughter.[5] He takes great pains to substantiate this theory by a reference to the saying of Bṛihaspatī, that the wife is half of her husband's body, and by other arguments. Bālambhaṭṭa also mentions the daughter-in-law as an heir, placing her after the paternal grandmother. Nevertheless, the claim of the daughter-in-law has not been admitted by any of the standard authors.

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[1] May. IV. 8, 9; Vīram. 132; Smṛitich. XI. 1, 57; Sarasvatī. § 513. The corresponding passage of the Mitāksharā has been omitted in Colebrooke's translation.

[2] (*For the Sanskrit, see Appendix.*)

[3] See also Dāyabh. XI. 1, 47.

[4] See Smṛitichandrikā, *ibid*, and XI. 1, 25.

[5] (*For the Sanskrit, see Appendix*); Gloss on Vishṇu XVII. 5. In his Gloss on XVII, 6, also Nandapaṇḍita says: "On failure of the heirs, beginning with the son and ending with the daughter-in-law, the daughters shall take the wealth."

Daughter.

Accordingly, the next heir after the widow is the daughter. Her interest in the estate is in general subject to the same restrictions as the widow's. In a division between several daughters, it is necessary to distinguish between married and maiden daughters, poor and wealthy daughters, and daughters who have or who do not have male issue. There is no part of India where all these distinctions obtain together, and there is little foundation for any of them in the Smṛitis. 1. All schools agree in preferring maiden daughters to married ones. This is the only distinction with regard to the daughter's right which is noticed in the Vivādachintāmaṇi. 2. The Mitāksharā Law is very clearly stated in the following passage of the Vīramitrodaya (p. 181): "Amongst the daughters also, first let the unmarried daughters take the paternal property; in their default, the married daughters; amongst these also, first the unprovided (poor) ones, and on failure of them the provided (wealthy) ones; all in the same predicament, however, take the property, dividing it equally." The same law is laid down with more or less precision in all the other Digests based on the Mitāksharā, both the translated and the untranslated ones. 3. The Dāyabhāga, after the unmarried daughter, calls all those married daughters to the succession who actually have, or are likely to have, male issue. Barren daughters and those who have only brought forth female children do not inherit at all. Widows destitute of male issue are also disqualified from inheriting under Bengal Law, but this disability has now been removed. It is worthy of remark that Nandapaṇdita, though writing in Benares, rejects expressly the doctrines of the Mitāksharā on this subject, and endorses the theories of the Bengal School, adding to them, however, the sensible rule that the maiden daughter shall not receive her deceased father's property at once, but that it shall be employed in order to defray her maintenance and the wedding expenses out of it, the remainder being delivered to her after her marriage.[1]

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[1] (*For the Sanskrit, see Appendix.*)

4. The Smṛitichandrikā agrees with the Bengal School so far that it pronounces the entire exclusion of those daughters who, " owing to barrenness or some other cause," are destitute of male issue.[1] This rule has been actually enforced in several South Indian cases. It should be observed, however, that it is not countenanced by any of the other authorities of Southern India. 5. Where there are several daughters of the same class, they take equal shares.

Growth of these rules.

Those authors who prefer daughters having or likely to have male issue to those deficient in this quality, assign as the reason of this preference the spiritual benefits conferred on the grandfather by the birth of a grandson. The ultimate reason for the universally prevailing theory that unmarried sisters have a prior claim to married ones must be sought in the great care displayed by the Indian Legislation in providing for the marriage expenses of young damsels, the performance of the marriage ceremony before she had attained the age of puberty being viewed in the light of an imperative duty. The further doctrine of the Mitāksharā, that poor married daughters shall take before rich married ones, may be attributed to practical motives of a similar kind. At the same time, it is evidently connected with the peculiar theory of the Mitāksharā regarding the meaning of the term Strīdhana, which will be discussed further on. There is no reason, the Mitāksharā argues, why Gautama's text on the devolution of Strīdhana (XXVIII. 24) should not be applicable to the paternal, as well as to the maternal, estate. This reasoning does not hold good, unless the term Strīdhana is interpreted according to its etymological meaning as denoting " the property of a woman " in general. It is certainly not accidental, that the Bengal writers, who refer the term Strīdhana to the separate property of a woman only, do not quote the text of Gautama in connection with succession to a male.

Daughter's son.

The daughter's son is not mentioned as an heir by Yājnavalkya and Vishṇu, nor by Aparārka and Çūlapāṇi in their Commentaries on Yājnavalkya. Baloka, as cited in the Dāyabhāga (XI. 2, 274) would tack him on at the end of the whole series of heirs given by Yājnavalkya, and the Vivādachintāmaṇi makes his right inferior to that of the parents. On the other hand, we learn from the

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[1] See also Smṛitichandrikā XI. 2, 18.

Dāyabhāga (*ibid.* 23, 29) that Govindarāja, the old Commentator of Manu, was for inserting the daughter's son even before married daughters in the order of heirs, and that his right to succeed on failure of daughters was also expressly acknowledged by Viçvarūpa, the predecessor of Vijnāneçvara, by Bhojadeva (XI. century), the predecessor of Govindarāja, and by Jitendṛiya. His position as next heir after the daughter is now recognized all over India, the Mithilā School not excepted.[1] The custom of addressing Çrāddhas to the maternal grandfather is very old, and considering the particular importance which is attributed to Çrāddhas by the Bengal writers on inheritance, the right of the daughter's son might be deduced from his duty to offer Çrāddhas. But this explanation would not hold good outside of Bengal, and it is far more likely, therefore, that the right of the daughter's son has to be traced to the custom of appointing a brotherless daughter to become a Putrikā. Vijnāneçvara has taken great pains to establish the right of the daughter's son, as he does not refrain from proposing such an artificial interpretation as this that he is referred to by the particle *cha*, "and," which, in the text of Yājnavalkya, follows immediately after the word *duhitaraç*, "the daughters." In the Madanapārijāta, the same force is attributed to the particle *eva* in the text of Yājnavalkya.[2]

The son of the daughter's son.

The same expletive particle has been held out as justifying the introduction of the daughter's grandson after her son. Lakshmidhara, as quoted in the Sarasvatīvilāsa (§§ 632, 633, 653—656), teaches that property devolving on a daughter who has a son assumes the nature of unobstructed property, and is passed on by the daughter's son to his own son, in case he was alive at the time of the devolution of the estate.[3] But as it is not quite clear whether the author of the Sarasvatīvilāsa meant to make this theory his own,[4] it does not possess more than a historical interest, and the same may be said of the attempt of Bālambhaṭṭa to introduce the daughter's daughter after the daughter's son.[5]

Daughter's daughter.

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[1] Mayne. § 477.

[2] (*For the Sanskrit, see Appendix.*)

[3] This seems to be the import of the difficult § 646.

[4] See §§ 562. 565.

[5] Bālambhaṭṭa's favourable disposition towards female rights has been combined with the supposed female authorship of the commentary attributed to Bālambhaṭṭa. See Rajkumar Sarvadhikari's Lectures, pp. 482-483, 669. The same explanation, however, does not hold good in the case of Nandapaṇḍita.

Parents.

The rule that, on failure of the daughter's son, the inheritance passes to the parents has been adopted, though not without a contest,[1] by all the leading authorities; but there is a direct conflict of authority as to whether the mother or the father is to take first. This diversity of opinion has been called forth by the ambiguity of the term 'the parents' in the text of Yājnavalkya. Considering that the closely analogous text of Vishṇu mentions the father first, and the mother afterwards, and that the older Smṛitis take a very unfavourable attitude towards women's right of inheritance, it is not doubtful, from a philological point of view, that those Commentators are right who make Yājnavalkya say the same as Vishṇu. The opinion of Vishṇu is followed by Jīmūtavāhana, Çrīkrishṇa, Çūlapāṇi and other writers of the Bengal School, by Bālambhaṭṭa (Lakshmīdevī), Aparārka, Nīlakaṇṭha, Nandapaṇḍita, Devaṇṇabhaṭṭa, and by several other eminent authorities, whose opinions are cited in the Vīramitrodaya and other works.[2] Vijnaneçvara, however, places the mother before the father, chiefly because the Sanskrit compound *Mātāpitarau*, the parents, means literally mother and father; and this doctrine has been adopted by Viçveçvara in his Commentary on the Mitāksharā and in the Madanapārijāta; by Nārayaṇa, in his Commentary on Manu; by Rudradeva, in the Sarasvatīvilāsa; by Vāchaspatī, in the Vivādachintāmaṇi; by Chandeçvara, in the Ratnākara; and by Miçarumiçra (Lakshmīdevi), in the Vivādachandra.[3] The three last named authors, who belong to the Mithilā School, found their opinion on a different reading in the text of Vishṇu, by which the mother is placed before the father in the order of heirs. Kamalākara also follows the Mitāksharā, and says that the rule of Vishṇu relates to a father who is unequal in caste to his son.[4] In the Vīramitrodaya the priority of the father's or mother's claim is made to depend on their superiority in virtue. Mādhava and Varadarāja do not decide the point. The opinion that both parents shall take together, dividing the property equally, is universally reprobated.[1]

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[1] See Lakshmīdhara's elaborate refutation of the theory that the parents inherit before the daughter's son. Sarasvatīv. §§ 657—709.

[2] Dāyabh. XI. 3; Dāyakr. I. 5; Dīpakālikā (MS.); Bālambhaṭṭatīkā (MS.); Aparārka (MS.); May. IV. 8, 14, 15; Vaijayantī (MS.); Smṛitichandri. XI. 3, 1, 9; Vīr., p. 188. etc.

[3] Mit. II. 3; Subodhinī and Madanapārijāta (MSS.); Nārāyana's gloss on M. IX. 217. (*For the Sanskrit. see Appendix.*) "The mother being dead and the father who takes after her having died afterwards;" Sarasvatīv. §§ 570—572; Vivādach. 293—299 (Tagore); Dig. V. 8, cccexxiv; Vivādachandra (MS.)

[4] Kamalākara, in the Vivādatāṇḍava, after stating first the opinion of Vijnaneçvara, and then the contrary doctrine of "Aparārka, Jīmūtavāhana,

Priority of the mother.

It would be useless to argue this question on general grounds. This is done by the Indian Lawyers, who, besides referring to the philological argument quoted above, allude to the superior dignity of the father and to the superior efficacy of his Çrāddha to those offered by the mother on the one hand, and to the pre-eminence of the mother to the father and to her nearer propinquity to the son on the other hand, and quote divers texts in support of both propositions. That the Smṛiti-texts, with the exception of one text of Bṛihaspatī, make in favour of the nearer claim of the father, is undeniable. It may also be said that the great pains taken by Vijnāneçvara and the elaborate and artificial character of the arguments adduced by him in order to prove the correctness of his doctrine, tend to show that it was an innovation in his own time. This innovation, however, may have been founded on actual usage, and there is no sufficient reason for swerving from the letter of the law in all those provinces where the Mitākshara is the paramount authority; and besides, in Mithilā, where all authorities agree in preferring the mother to the father. Moreover, by following the Vīramitrodaya, rather than the Mitākshara, in Benares, the Courts would impose on themselves the arduous task of examining and weighing against one another the religious merits of the father and mother; by following the Smṛitichandrikā in South India, they would offend against the doctrine of both the Mitākshara and the Sarasvatīvilāsa; and by following the Mayūkha in Western India, they would have against themselves not only the Mitākshara, but the Vīramitrodaya, Vivādataṇḍava and Subodhinī, which works, though inferior to the Mayūkha, are still considered as subsidiary authorities in that part of India.

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and the Madanaratna," goes on to say (*for the Sanskrit, see Appendix*):—"But in truth the prior claim of the mother is established, therefore that order of precedence which is stated in the texts of Vishṇu and the rest, relates to a father of unequal caste." This shows that Colebrooke has erred in referring Kamalākara among the advocates of the father's prior claim.

[1] This doctrine, which is most usually attributed to Çrikhara, is also put forth by Kullūka in his gloss on M. IX. 217. He is refuted by Raghavananda. Nandanāchāriya is silent.

Step-mother.

The stepmother is incapable of inheriting under Bengal Law, and the way in which Vijnāneçvarā speaks of the mother's right of inheritance and to a share on partition, shows distinctly that he did not mean to grant any such right to the stepmother, though many Digests of the Mitāksharā School take a different view of the stepmother's right on partition. Bālambhaṭṭa is the only writer who mentions her as an heir. Under Bombay Law she may be brought in among the heirs as a female Sapiṇḍa.[1]

Brothers.

On failure of the parents, the inheritance descends to the brothers under the leading texts of Yājnavalkya and Vishṇu. It has been seen, however, that the relative position of the parents and brothers as heirs was not settled in the epoch of the Smṛitis, and the same uncertainty has continued to prevail in the time of the Commentators. Some authors propose to reconcile the conflicting Smṛiti-texts on this subject by the rule that the parents shall take ancestral property, whereas self-acquired property shall belong to the brothers.[2] The Smṛitichandrikā (XI. 4, 14), Vaijayantī and Aparārka, following a text of Bṛihaspatī, state, that the brother may inherit before the mother in case she permits it, but not otherwise. The Vīramitrodaya (193) makes the prior claim of the parents or brothers to depend on their individual merit. On the other hand, the text of Manu (IX. 217) on the paternal grandmother's right to inherit after the death of the mother, has caused some writers to place the paternal grandmother before the brothers in the

Grand-mother.

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[1] West & Bühler.

[2] This opinion is delivered in the Ratnākara. as quoted in the Vivādachintāmaṇi, p. 155 (Sanskt. text) and in Cūlapāṇi's gloss on Yājn. II. 135. Cūlapāṇi, relying on a text of Devala, says (*for the Sanskrit, see Appendix*): "The right of the parents to inherit even when brothers are in existence concerns property acquired by the father, grandfather and other (ancestors). What has been acquired without detriment to the paternal estate belongs to the brothers alone, though parents are living." This remark appears to have been taken from the corresponding part of Aparārka's Commentary, though Aparārka's remarks in the first instance relate to the property of an adulterous widow only. Such property. according to Aparārka, shall go to the parents or brothers. (*For the Sanskrit, see Appendix.*)

The decision is as follows: "If the property has been acquired by the brothers without using the paternal wealth, through common exertion, the brothers alone shall be heirs, though the parents be living. But if the property has been acquired by the father. grandfather, and the rest, the right of inheritance does not belong to the brothers, but to the parents." See also the Kalpataru, as quoted in the Vivādach., *ibid.*, and in the Vīram., 192.

order of heirs. This course has been adopted by Devaṇṇabhaṭṭa writing in the South, and by Nandapaṇḍita writing in the North, of India, and before them by Dhāreçvara (11th century).[1] The Vīramitrodaya has recourse to the same method as in the two previous cases. It regulates the precedence between the grandmother and the brothers according to their relative merit. The leading authorities in every part of India, however, have conformed entirely to the doctrine of Yājnavalkya and Vishṇu. The persistency of this doctrine is shown by the fact that it has also been adopted by Haradatta in his Commentaries on Gautama and Apastamba and by the Commentators of Manu, though the literal meaning of Manu's text (IX. 217) implies that the grandmother shall take immediately after the mother.

Half-blood.

Whether stepbrothers have any claim to the inheritance according to the leading Smṛiti-text, depends entirely on the question as to which is the best of the several readings of Yājnavalkya's text on reunion (II. 139). If Aparārka[1] and Çūlapāṇi's reading and Aparārka's interpretation of it is to be followed, half-brothers can never succeed to one another; and Aparārka says accordingly (in his gloss on II. 138) that uterine brothers alone (take the inheritance) on failure of the parents, on account of their propinquity, and not the stepbrothers.[2] Nīlakaṇṭha does not give the stepbrother a place here, but he makes him inherit after the grandmother, and together with the grandfather.[3] The Vivādachintāmaṇi does not insert the stepbrother after the brother in the series of heirs, though it considers him to be mentioned as an heir in a text of Devala (p. 154, Sanskr. text) and acknowledges his right, where he was reunited with his deceased stepbrothers (pp. 157—160). All the leading authorities, however, from Vijnāneçvara and his predecessor Viçvarūpa[4] downwards, make the half-brothers succeed on failure of uterine brothers, on the ground of propinquity and because the general term *Bhrātar* in the text of Yājnavalkya must be used to denote both uterine and stepbrothers, uterine brothers being designed by the word *Sodara*. The authors quote besides some express Smṛiti-texts in favour of the succession of the half-blood.

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[1] Smritich. XI. 4; Vaijayantī XVII. 7. In both works the contrary opinions of Vijnāneçvara (Mit. II. 5, 2) is expressly refuted.

[2] (*For the Sanskrit, see Appendix.*)

[3] May. IV. 8. 16. 20.

[4] Mit. II. 4, 5; Dāyabh. XI. 5, 10.

Nephews.

On failure of brothers of the half-blood, the inheritance descends to the sons of brothers of the whole blood; and on failure of the latter, to the sons of brothers of the half-blood. In cases of competition between brothers and nephews, the latter are in general excluded by the rule, that the Sapiṇḍas take according to the degree of their nearness, but they succeed to the interest of their father in the property of a predeceased brother of his, which had not yet been divided at the time of their father's death. The reason of this rule lies in this, that, as stated in the Madanapārijāta, their own father has died after the claim to his deceased brother's property had already vested in him.[1]

Sisters and nieces.

Some authors insert after the brother the sister, and after the nephew the niece; but this view is refuted in the Mayūkha, Vivādataṇḍava and other works. The Vaijayantī rests it on the following grounds: 1. A grammatical rule of Pāṇini on the meaning of the word *Bhrātar*. 2. The equal propinquity of brothers and sisters. 3. Manu's text (IX. 212) on the sister's right to succeed along with brothers to the property of a reunited coparcener. The sons of sisters shall take after brother's sons. Bālambhaṭṭa (Lakshmīdevī) agrees with Nandapaṇḍita, and though the view that sisters and nieces shall take after brothers and nephews has never gained general ascendency, it is important from a historical point of view as evidencing the growing friendly disposition of the later Jurists towards female succession.

Sons of the same mother.

The same remark applies to the rule which extends the succession of the half-blood to those brothers who have the same mother in common. This rule is not given anywhere except in Nandapaṇḍita's Vaijayantī,[1] and the order of precedence among brothers and sisters of the whole blood and of half-blood is established as follows by that writer :—1, brothers of the whole blood; 2, sisters of the whole blood; 3, sons of the same father; 4, sons of the same mother.

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[1] (*For the Sanskrit, see Appendix.*) The view that the Mayūkha appears to allow the sons of a brother who is dead to share along with surviving brothers (Mayne. § 484) has been called forth by Borrodaile's entirely erroneous translation of May. IV. 8. 17. A perfectly literal translation of the Sanskrit text, which is the same in the Bombay lithographed edition 41a and in N. V. Mandlik's edition, p. 54, has been given by the latter. What Nīlakaṇṭha means to say is this, that nephews, though their claim has been barred at the time of their uncle's death by their own father being then alive, succeed to their father's share of the property of their deceased uncle and divide it with their other uncles under the Law of Representation, in case their father dies before the division of his brother's property has been effected. This is precisely the opinion of Vijnāneçvara and the other writers.

Grand-nephews.

Grand-nephews come in directly after nephews under Bengal Law, and according to Aparārka, Varadarāja and Nandapaṇḍita. But the Mitākshara, Mādhavīya, etc., assign to them a lower place in the order of heirs, as will be seen directly.

Remote kindred.

The nephew is the last of those heirs who are enumerated singly by Yājnavalkya and Vishṇu. On failure of them attaches the succession of remote and very remote relatives, who are designed by these two writers, as in the other Smṛitis, by those vague and general terms denoting relationship in general which have been briefly referred to before. The vagueness of the ancient rules on this head left a very wide scope for the interpretatory skill of the Commentators, and their divergence both in questions of principle and of detail is very considerable. The principal difference between the Bengal School and the other schools as to the succession of males consists in the method adopted by the Bengal writers of testing the claims of an heir by the principle of spiritual efficacy and of introducing under this method a number of cognates between the agnates, instead of placing them after the agnates, as the other schools do. Under the Mitāksharā system, affinity is in reality the sole text of the priority of an heir, though the spiritual benefits conferred by him on his deceased relative are occasionally referred to as an additional reason for his right to succeed. Nor has the term Sapiṇḍa retained its original meaning in the language of Vijnāneçvara. It does not denote "a kinsman connected by funeral oblations," but it means one who has particles of the body in common with his deceased relative, more particularly a blood relation within six degrees. The same explanation is given by Viçveçvara in the Madanapārijāta, by Nandapaṇḍita in the Vaijayantī, and by other writers who have followed the system of Vijnāneçvara; and it is easy to see how decisively this theory must have operated in favour of the principle of affinity and against the principle of spiritual efficacy in determining the order of succession. Thus Jīmūtavāhana (Dāyabh. XI. 1, 37—42) deduces both from the express text of Baudhāyana and from the derivation of the word Sapiṇḍa as denoting one connected by funeral oblations, the doctrine that Sapiṇḍa relationship includes the agnates within three degrees only, as far as the Law of Inheritance is concerned, though he admits that, for questions of impurity caused by a death and the like, the number of Sapiṇḍas amounts to seven.[1] Vijnāneçvara nowhere refers to a distinction of this kind, and the natural inference is, that the term Sapiṇḍa means agnates within six degrees whenever he uses it. Nor does he ever quote Baudhāyana's text on Sapiṇḍaship.

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[1] After having established the general right of sisters to inherit, Nandapaṇḍita goes on to say: (*for the Sanskrit, see Appendix*):—

"Then those brothers who are sons of the same mother and father shall inherit in the first instance, because possessing more particles of their father's body (than their sisters) they are the next of kin. On failure of them, those sisters who are daughters of the same mother and father shall inherit, because they are more nearly related (to the deceased owner) than brothers born of a different mother, and because the sons of a different mother are distant through their mother, and the sons of a different father through their father. But on failure of sisters they (the half-brothers) shall also inherit under the text: Where there are both uterine brothers and stepbrothers, the uterine brothers shall take alone in spite of the existence of a stepbrother. And then the sons of the same father shall take first, and the sons of the same mother afterwards, because the seed is superior (to the womb) and because the nearness determines the order (of heirs). Thus, supposing a man to have had two wives and two sons by the one wife, one son by the other wife, the mother of two sons subsequently marries another husband, and bears another son to him, so that she has three sons. In that case, if one of the two sons by her first husband should die, his property is taken by the son of the same mother and father in the first instance. On failure of him it is taken by the son of the same father, though he is born of a different mother, because the seed is superior (to the womb). On failure of him it goes to the son of the same mother and of a different father."

Mitāksharā system.

Passing to the details of the Mitāksharā system, I will first advert to an important omission in Colebrooke's translation, which, though noted by Dr. Bühler and other Sanskritists, seems to have given rise to several misconceptions. In Mit. II. 5, 5, the two Sanskrit words *a Sapta-*

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[1] The etymologically correct explanation of the term 'Sapiṇḍa,' under which it is connected with the funeral oblations, occurs outside of Bengal also,—*e. g.*, in the Smritichandrikā, Sanskārakāṇḍa Chapter on Marriage, where Sapiṇḍa is defined as follows:—

(*For the Sanskrit, see Appendix*): "Those who give Piṇḍas (funeral balls) to the same person are Sapiṇḍas."

māt have been left untranslated, and the second sentence in that paragraph ought to run as follows:—"In this manner must be understood the Succession of Sagotra Sapiṇḍas *as far as the seventh (person).*" The Sagotra Sapiṇḍas are the first of the two principal classes into which the Mitāksharā divides the Gotraja heirs of Yājnavalkya's text; the second class being the Samānodakas—*i.e.*, the more remote Gotrajas, from the seventh to the thirteenth degrees inclusive. The whole group of Gotraja heirs is, however, headed by the paternal grandmother, who takes before the paternal grandfather under a text of Manu (IX. 219), and probably also because the mother under Mitāksharā Law takes before the father. The paternal grandmother is followed by the paternal grandfather and his sons,—*i.e.*, the paternal uncles, and by their son's sons, in other words, the cousins of *præpositus;* then comes the paternal great-grandmother, great-grandfather, together with their sons and grandsons, and so on, in each line up to the thirteenth degree, or as far as the relationship can be ascertained. Simple as these rules may seem, they are not sufficient in order to establish the order in which the agnates take under Mitāksharā Law. It has been pointed out long ago by the Sastrīs that the enumeration of the agnates in the Mitāksharā is not extensive, but exemplificative; and Messrs. West & Bühler have shown that, in the opinion of Vijnāneçvara, the designation of Gotraja Sapiṇḍas belongs to all agnates within six degrees, while those removed further than six degrees come within the definition of Samānodakas. The question as to the order of precedence between these numerous heirs has given rise to much diversity of opinion. Passing over the opinions of earlier writers, I will only notice the arrangements proposed by Messrs. West & Bühler, and quite recently by a native scholar, V. N. Mandlik.[1] The distinctive feature of the Rāo Saheb's system is its close adherence to the letter of the rules of Vijnāneçvara and of his Commentator Viçveçvara. At the head of the Gotraja Sapiṇḍas he places those eighteen heirs ending with the great-grandfather's grandson, who are expressly named by Vijnāneçvarā. Then come twelve other heirs, down to the grandson of the seventh male in ascent, who are mentioned

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[1] West & Bühler's Dig., 124-125; Mandlik, 376—386.

Lecture IX.

by Viçveçvarā in the Subodhinī. Lastly, the descendants from the fourth to the sixth degrees of *præpositus*, the descendants from the third to the sixth degrees of his brothers, the descendants from the third to the sixth degrees of his paternal uncles, and so on, are added on the strength of Vijnāneçvara's general definition of the term Sapiṇḍas. The great objection to this system lies in the low position assigned to the grand-nephew, to the sons of a cousin, and to all other relatives of the same degree, the grand-nephew coming in as the 34th, the son of a cousin as the 42nd, heir, etc. The exclusion of the fourth generation in each line by Vijnāneçvara and Viçveçvara is, probably, connected with their general theory about the right of representation, which, as stated in the last Lecture, is not extended beyond the third descendant by either of these authors. Now this narrow view has been entirely overruled in the present day by the teaching of the other authorities as far as the deceased owner's own line is concerned. It seems but reasonable, therefore, that the same principle should be applied to the lines of the father, grandfather, and more remote ancestors. For the same reason I am unable to agree entirely with either of the two systems proposed by Messrs. West & Bühler, though under these two systems the position of the grand-nephew is very satisfactory. I would submit for consideration the following arrangement which is based on textual authority thus far, that it accords itself in its first part at least with the system proposed by Aparārka,[1] the colleague of Vijnāneçvara,

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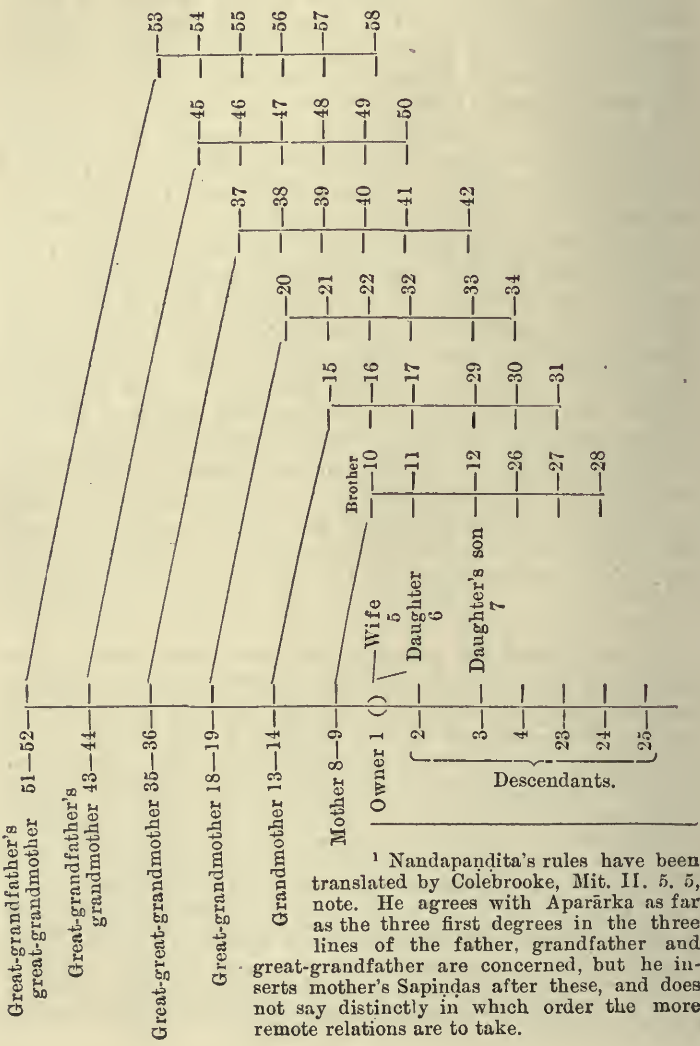
[1] A translation of this Section of Aparārka's Commentary has been given in Rajkumar Sarvadhikari's Lectures, pp. 648-649. As, however, the MS. used by my learned predecessor appears to have been deficient in the second portion, I subjoin the text and a translation of it. (*For the Sanskrit, see Appendix.*) There the uterine brother is a specially near Sapiṇḍa, because he presents water, etc., to the same persons (as the deceased owner himself). His son is slightly removed, because he presents one ball to his own father, who is the brother of *præpositus*, and does not receive a ball from the latter. This man's son is more distant than he is, because the balls he gives to his own father and grandfather are addressed to different persons. But this last man's son is very remote, because he presents all the three balls to different persons. Thus the brother, his son, and his son's son are the three nearest Sapiṇḍas in the father's line. The same rule applies to the grandfather's and great grandfather's lines. On failure of them the three descendants, *viz.*, the son and the rest,—*i. e.*, sons, grandsons, and great grandsons of each of the three paternal ancestors beginning with the father are heirs (in succession), by reason of their Sapiṇḍa connection with *præpositus*.

LECTURE IX

and by Vijnāneçvara's Commentator, Nandapaṇḍita.[1] From the subjoined Table of Sagotra Sapiṇḍas under Mitāksharā Law, the wives of collaterals and descendants have been omitted, the question as to their position and rights having to be discussed afterwards in connection with the rights of distant female relations in general:


Great-grandfather's great-grandmother 51—52—
Great-grandfather's grandmother 43—44—
Great-great-grandmother 35—36—
Great-grandmother 18—19—
Grandmother 13—14—
Mother 8—9—
Owner 1 ( )
Wife 5
Daughter 6
Daughter's son 7
2— 3— 4— 23— 24— 25—
Descendants.
Brother —10 —11 —12 —26 —27 —28
—15 —16 —17 —29 —30 —31
—20 —21 —22 —32 —33 —34
—37 —38 —39 —40 —41 —42
—45 —46 —47 —48 —49 —50
—53 —54 —55 —56 —57 —58

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[1] Nandapaṇḍita's rules have been translated by Colebrooke, Mit. II. 5. 5, note. He agrees with Aparārka as far as the three first degrees in the three lines of the father, grandfather and great-grandfather are concerned, but he inserts mother's Sapiṇḍas after these, and does not say distinctly in which order the more remote relations are to take.

I trust that this system will not be objected to on the ground of its being rather hard on the fifth, sixth, and seventh descendants of the owner. It is quite an exceptional thing for a man to have a great-great-grandson alive at the time of his death, not to mention more remote descendants. On the whole, the order of the precedence among the more remote Gotraja Sapiṇḍas must always remain an open question, but thus much seems clear that the narrower view of the Mitāksharā as to the great grandson's right having been broken through in the case of unobstructed inheritance, it would be inconsistent to adhereto it in the case of obstructed inheritance.[1]

Bandhus.

After the Gotrajas, the Mitāksharā calls the Bandhus, or cognates, to the succession. That the Bandhus correspond as exactly as possible to the cognates of the Roman Law follows from the definition of Vijnāneçvara, who says, that the term Bandhu is an equivalent for Bhinnagotra Sapiṇḍas, —*i.e.*, blood-relations within six degrees, who belong to a different family. This definition occurs in an earlier Section of the Mitāksharā (II. 5, 3). In treating of the succession of Bandhus (II. 6) Vijnāneçvara, under the before quoted text of Baudhāyana or Vṛiddha Çātātapa, divides them into three species, *viz.*, a man's own Bandhus, his father's Bandhus, and his mother's Bandhus. Each species consists of three Bandhus, and these may be briefly described as being, in the first case, the first cousins of *prœpositus;* in the second case, his father's; and in the third case, his mother's first cousins, with the restriction that Sagotra cousins are excluded in all the three cases, as being included under the term Sagotra Sapiṇḍas. Each of these nine Bandhus takes on failure of the one preceding in order. It is clear that this enumeration is not meant to be exhaustive, but exemplificative. Which other relatives have to be supplied in Vijnāneçvara's opinion, may be seen from his observations on the term Bandhu in the Section on Succession to a Partner in Business. Taking all his remarks on the meaning of Bandhu or Bhinnagotra Sapiṇḍa together, and comparing them with what he says about the meaning of Sapiṇḍa in the Section on

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[1] The above had been written long since, when Rajkumar Sarvadhikari's Tagore Lectures, published 1882, came into my hands. I rejoice to observe the perfect agreement, up to the 39th heir, of the above arrangement with the one proposed by him.

LECTURE IX.

Marriage,[1] the male Baṇḍhus in Vijnāneçvara's system may be supposed to include the following persons:[2]

1. In the deceased owner's own line: the male issue within four degrees of the daughters of his descendants;
2. In the father's line: the male issue within four degrees of the daughters of his father's decendants;
3. In the mother's line: all relations within four degrees.

The extension of the Baṇḍhus to four degrees only is in accordance with the rule that Sapiṇḍaship in the female line does not extend beyond four degrees.

More than nine Bandhus.

The later Digests outside of Bengal agree in the main with the teaching of the Mitāksharā. One point is quite clear, *viz.*, that the opinion sometime held as to the restriction of the term Baṇḍhu to the nine Baṇḍhus specially mentioned is not countenanced by these works. Thus the Vīramitrodaya (p. 200) says, that the maternal uncle must needs be included in the term Baṇḍhu in the text of Yājnavalkya (II. 135).[3] The Vivādachintāmaṇi (Calc. ed., 156), in enumerating the heirs, paraphrases Baṇḍhu by *mātulādih*, "the maternal uncle and the rest" Elsewhere also the two synonymous terms, Bāṇḍhu and Bāṇḍhava, though denoting relationship in general, are not seldom explained in the same way. Thus Haradatta, in commenting on the phrase "the mother, father and their Baṇḍhus," in a text of Gautama (VI. 3), says that their Baṇḍhus means "the maternal uncle, the paternal uncle, and the rest." The Sarasvatīvilāsa (§ 647) interprets the term Bāṇḍhava by "the maternal uncle and the rest, and the son of the father's sister and the rest."[4] Mādhava (p. 55, cf. Goldstücker, 27, note), in commenting on Yāj. II. 149, interprets Bāṇḍhava by "maternal uncles and the rest." Varadarāja (p. 47), in commenting on a text of Kātyāyana relating to Strīdhana, gives precisely the same explanation of the term Baṇḍhu.

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[1] It is true that some works give different rules about the extent of Sapiṇḍaship, according as it relates to impurity, marriage, or inheritance. This view is taken, *e. g.* in the Dāyabhāga (XI. 1, 38—42). But in those works which do not establish different sorts of Sapiṇḍaship for different purposes, the general rules on Sapiṇḍaship must apply to all cases indiscriminately. The statements of the Vīramitrodaya (pp. 156-157, 199-200) on this subject are hardly consistent.

[2] See West & Bühler, 133—137.

[3] As for the wrong interpretation put on this passage in the case of Gridhari Loll Roy *v.* The Government of Bengal, see Prof. Goldstücker's paper on the Deficiencies, etc., p. 26, note.

[4] In Mr. Foulkes's translation read—"The son of the father's sister" for "the father's sister."

Smṛiti-chandriká.

Vijnāneçvara's definition of Baṇḍhu, as being convertible with Bhiṇṇagotra Sapiṇḍa, is repeated in the Vīramitrodaya (p. 199), Vivādatāṇḍava,[1] Sarasvatīvilāsa (§ 586) and other Digests of the Mitāksharā School. The Smṛiti-chandrikā, on the other hand, lays down the general rule (XI. 5, 15) that where, in any of the three groups of distant relatives, *viz.*, Sapiṇḍas, Samānodakas and Baṇḍhus, one of the textual (Vāchanika) nearest kinsman should be wanting, his place shall be taken by another, who is somehow equal to him. In support of this rule he quotes a text of Gautama (XXVIII. 21).

Order of precedence among the Baṇḍhus.

As for the order in which the Baṇḍhus take, it has been proposed by Messrs. West & Bühler to place the nine Baṇḍhus specially named at the head of the Baṇḍhus; and after them the others in the order of propinquity. This arrangement is based on the principle proclaimed in the Mayūkha that incidental heirs are placed at the end. The same principle is virtually enounced by Vijnāneçvara himself (Mit. II. 5. 2). It may be questioned, however, whether the uncle should not come in as the very first of the Baṇḍhus. In one passage of the Mitāksharā, when engaged in explaining the term Baṇḍhu, Vijnāneçvara refers back to the above definition, and gives to understand that this definition includes primarily the maternal uncle; and in another passage he says similarly, that the maternal uncle is the first of the Baṇḍhus.[2] The author of the Vīramitrodaya seems to be of the same opinion, as he points out the absurdity of making the maternal uncle's son an heir, and excluding the maternal uncle himself, who is more nearly related to the deceased than his son. The passages quoted before from Haradatta, etc., likewise name the uncle as the first of the Baṇḍhus. In the Treatises on Funeral Oblations, and in Sanskrit literature in general, there are several indications tending to show that the relation between a maternal uncle and his nephews was one of special intimacy in India, as amongst other archaic nations,—*e. g.*, among the ancient Teutonic tribes. Whether this institution may have to be traced to the uncertainty of paternity in primeval times, or to the view that maternity being more visible, is therefore a nearer kind of relationship than paternity, or whatever other opinion may be entertained of its origin, it is spread over the whole world, and together with it the succession of the nephew to his maternal uncle's property, which is simply the converse of the uncle's right to succeed to his nephew. Taking for granted then that the maternal uncle was a specially favoured and influential relative in India, it is but natural to suppose that, in this country as elsewhere, his general position did not fail to influence his rights as an heir. *Vice versâ*, the nephew may be supposed to have possessed a preferential right to succeed to his maternal uncle. An essentially new system of Baṇḍhu relationship under Mitāksharā Law has been recently proposed by Rajkumar Sarvadhikari.[1] He takes the three Baṇḍhus each as indicative of the three principal classes of Baṇḍhus, and not as embracing the nine Baṇḍhus specially named only. This theory has the advantage of giving a clue to the order of precedence among the Baṇḍhus. However, though it is developed with rigorous logic from the data put forth by its author, there is no sufficient foundation for these data in the Mitāksharā to command its ready acceptance.

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[1] (*For the Sanskrit, see Appendix.*) Though the Baṇḍhus are Sapiṇḍas, they are mentioned separately, because they belong to a different Gotra, or family.

The Vivādatāṇḍava quotes and refutes a long passage attributed to Aparārka, to the effect that the three Baṇḍhus of one's own only can inherit. The MSS. of Aparārka, quite on the contrary, contain the statement that these three Baṇḍhus do not inherit alone (*For the Sanskrit, see Appendix.*) "On failure of Gotrajas, a Baṇḍhu (inherits), —*i.e.*, the sons of the father's sister, of the mother's sister, of the maternal uncle and other (cognates)."

[2] The first passage occurs in the Commentary on Yājnavalkya III. 24. There the word *Mātula* (maternal uncle) is explained as follows: "The word *Mātula* refers by implication to one's own Baṇḍhus, to the mother's Baṇḍhus, and to the father's Baṇḍhus, as well as being (also) connections through a female. They have been enumerated in the gloss on the text (of Yājnavalkya II. 135), called the wife and the daughter." The earlier passage of the Mitāksharā here referred to is Vijnāneçvara's definition of the term Baṇḍhu (Mit. II. 6). In commenting on II. 149, Vijnāneçvara

Bengal system.

The distinctive feature of the Bengal system, which consists of the insertion of the Baṇḍhus between the agnates by virtue of the principle of spiritual efficacy, has been referred to before. There exists much difficulty as to the way

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speaks of the relatives called Baṇḍhus, as consisting of the Baṇḍhus on the mother's side, such as the maternal uncle and the rest. This text occurs in the Section on Inheritance (II. 12. 2), but it has not been correctly rendered by Colebrooke. See Goldstücker, *ibid*, 27, note, and 30.

[1] Tagore Law Lectures, 687—735.

in which this principle has to be worked out in each case. It would not be easy, however, to say anything new on this subject after the exhaustive discussion it has met with in several decisions of the High Court of Bengal, and in the Lectures of previous Tagore Professors.

Exclusion of females in the Bengal School.

Another point of difference between the Mitāksharā and Dāyabhāga concerns the position of females among the remote heirs. In this case, however, Devannabhaṭṭa, Mitramiçra and other writers of the Mitāksharā School side with the Dāyabhāga. Those Indian writers who deny the right to inherit of the distant female relatives found their opinion chiefly on two ancient texts, which declare the general incompetency of women to inherit. It has been pointed out that these texts have no bearing on the Law of Inheritance originally; but this is a historico-critical question, which does not concern us here. The Dāyabhāga takes these texts to show that females can never inherit except those mentioned in special Smṛiti-texts, *viz.*, the widow, daughters, mother and the paternal grandmother, who, according to Jīmūtavāhana, takes after the paternal grandfather. The same opinion, says the Dāyabhāga, is conveyed in the text of Yājnavalkya (II. 135) on Succession, by the term Gotraja, "a family member," literally "born in the family," which excludes female Sapiṇḍas, because they are not born in the same family.[1] I must note here an important variation of reading in the text of Yājnavalkya just quoted. The Dāyabhāga reads *Gotrajā,* and this use of the masculine singular form ("a male family member") precludes absolutely the notion of any female Gotraja being called to the succession under this text. The same reading is given by all other Bengal writers, including Kullūka, the celebrated Commentator of Manu,[2] and by the Mithilā writers,[3] and it may be traced to the Commentary of Aparārka.[4]

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[1] (*For the Sanskrit, see Appendix.*) Read in Colebrooke's translation (Dāyabh. XI. 6, 10): "And for the further purpose of excluding females related as Sapiṇḍas (or the wives of Sapiṇḍas), since these *do not* spring from the same line," instead of "since these also sprung from the same line."

[2] Gloss on M. IX. 187. Kullūka's follower Rāghavānanda has the same reading (gloss on 185).

[3] See Vivādach. p. 154; Vivādachandra (MS.)

[4] Several MSS. of the text of the Yājnavalkya-smṛiti, especially those coming from Bengal, appear likewise to have preserved this reading, and it has been adopted from them in the two Calcutta Editions of the Sanskrit text of that work, and in Professor Stenzler's Edition. Mandlik's

LECTURE IX.

Looking at this reading from a philological point of view, it must be confessed that it is very acceptable, as it corresponds to the term immediately following, Baṇḍhur, which is also a singular form used in a collective sense. But whatever may be the intrinsic merit of this reading, it is not the reading recognized by Vijnāneçvara. The Mitāksharā exhibits the plural form *Gotrajā*—*i.e.*, "family members," and this reading has been adopted in all the Bombay, South-Indian and Benares Digests except Aparārka.

And in the Smritichandriká and Víramitrodaya.

It is obvious that the adoption of this reading creates the possibility of female succession, which, under the other reading, is absolutely precluded. But though the plural form Gotrajā, "family members," may include female relatives, it does not necessarily do so. This point is insisted upon in the Smṛitichandrikā (XI. 5), which states, that although there would be no objection from a grammatical point of view to considering the plural form Gotrajā as a compound of two genders, including both male and female relatives of the Gotrajā class, it would be necessary to show a special reason for such an assumption as this, the *primâ facie* view of the matter being that it relates to male Gotrajas only. Moreover, Devaṇṇabhaṭṭa goes on to say: The general incapacity of women to inherit is declared in the Çruti (Veda), and the term Gotraja, in the text of Yājnavalkya, must, therefore, be referred to males only, just as the term *Putra* (son) in another text, which is discussed by the Commentator of the Apastamba-sūtra. Finally, Devaṇṇabhaṭṭa refutes the opinion of Vijnāneçvara, that the paternal grandmother is to take as a Gotrajā relation, her right attaching, in his opinion, directly on failure of the mother (XI. 4, 6—11). The position thus assigned to the paternal grandmother is the only point of difference between the Bengal and Smṛitichandrikā doctrines. The Vīramitrodaya (174-175; 196—200) likewise, while refuting

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Edition has the other reading. Though Aparārka does not admit distant female relations to the succession, he does not base this rule on the Çruti. On the contrary, he says:—

(*For the Sanskrit, see Appendix.*)

The *explanatory* text—Therefore women are feeble and incompetent to inherit—has to be applied conformably to circumstances in corroboration (of rules otherwise established). It must be referred, therefore, to the case where there are sons.

both the Dāyabhāga and the Smritichandrikā doctrine regarding the position of the grandmother, endorses the theory that females cannot inherit except under special texts. It refutes the opinion of Vidyāraṇya (Mādhava), that the Çruti relative to the exclusion of women admits of a different construction, and refers to the wives of paternal uncles, etc., as instances of excluded females.

Females admitted to succession.

Passing to those Digests, which show themselves favourable to female succession, I will remark first that the opinion of Mādhava has been correctly stated by Mitramiçra. Mādhava says, indeed, that the Vedic text, which is quoted in support of women's incapacity to inherit, relates really to their incapacity to take a portion at the solemn Soma sacrifice, and this interpretation has been adopted by Mādhava's successor Varadarāja (40). The Sarasvatīvilāsa, though often referring to the same text in connection with succession, quotes with approval an interpretation of it (§ 336), under which the incapacity to inherit is restricted to the case of a division between a father and his sons.[1] Nor is the author of the Sarasvatīvilāsa behindhand in applying this principle to obstructed inheritance. He refutes (§§ 583—585) the doctrine of the Smritichandrikā, that the paternal grandmother takes immediately after the mother, and asserts that the opinion pronounced by Vijnāneçvara on this subject is the correct one. Mādhava's and Varadarāja's statements regarding the succession of remote kindred are extremely brief, and contain no reference to the great-grandmother, etc. But from what has been said before about their general opinions regarding the right of women, it follows that this omission cannot be intentional, and that these writers, quite on the contrary, may be supposed to have favoured the claims of the wives and daughters of collaterals even. In corroboration of this view it may be pointed out that Varadarāja, in

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[1] In the Sarasvatīvilāsa this interpretation is attributed to Vijnāneçvara, Asahāya, Medhātithi and others. It is actually found in the Commentary of Aparārka (see the preceding note). It may occur in the lost portion of Medhātithi's Commentary on Manu, though the analogous text of Manu, IX. 18, is interpreted differently by Medhātithi. In the Mitākshară I have not been able to find anywhere a reference to the said Çruti-text. The Sarasvatīvilāsa, in one place (§ 144), quotes a text of Gautama on women's incapacity to inherit (read "women take no share of the inheritance, because they are Nirindriya"), which is certainly not authentic. The quotations in the Sarasvatīvilāsa, as observed before, are extremely unreliable.

Mayúkha.

treating of Succession to Strīdhana (p. 52), takes the plural form Svasrīyādyan, "the issue of the sister, etc.," in a text of Brihaspatī to relate both to male and female issue, and to prove that both males and females should have a claim to the heritage. Of the Benares and Bombay Digests, the Vivādataṇḍava, Subodhinī and Madanapārijāta do not refer to the wives and daughters expressly, but neither do they exclude them anywhere. The Vaijayantī (XVII. 10), while disapproving altogether of the Succession of the Nine Technical Bandhus, on the ground that the sister and the sister's son are nearer relatives than the son of the father's sister and the rest,[1] introduces the sister and the father's sister, etc., as heirs, where the great-grandfather's line has been exhausted down to his great-grandson. It may be noticed *en passant* that Nandapaṇḍita agrees with other advocates of women's rights in applying the text of Manu on the right of the nearest Sapiṇḍa to females, though Sapiṇḍa in that text is used in the masculine gender.[2] The sister and her sons, etc., are also mentioned among the mother's Sapiṇḍas, who are to inherit "on failure of the father's Sapiṇḍas;" but who the father's Sapiṇḍas are does not become clear. The Mayūkha shows itself far more favourable to female succession than any other of the standard Digests. It agrees with the Mitākshara in placing the grandmother at the head of the Gotrajās, whom it designs as Gotrajā Sapiṇḍas; but it does not copy the remark of the Mitākshara, that the Gotrajās consist of three groups of relatives,—the grandmother, the Sapiṇḍas, and the Samānodakas. This is no doubt because the Mayūkha recognizes the right of the sister also, whom it inserts directly after the grandmother. The reasons adduced for this proceeding are highly interesting, and I may be allowed to quote that passage of the Mayūkha in full, particularly as it has not been rendered correctly in Borrodaile's translation. After having stated that, on failure of the paternal grandmother, the inheritance belongs to the sister, and having quoted in support of this proposition texts of Manu (IX. 187) and Brihaspatī, showing that the right to succeed depends on propinquity, Nīlakaṇṭha goes on to say: "And (she inherits for that reason also) because she is also born in her brother's family (like other Goṭrajās), and partakes therefore of the qualities of a Gotrajā relation. It is true that she does not come within the definition of a Sagotra relation. But this (quality of being a Sagotra relation) is not mentioned here as a condition of taking the inheritance." The *locus standi* thus created for the sister is that she takes as a Gotrajā relation, according to the etymological meaning of that term as denoting one born in the same family. This, as pointed out by Messrs. West & Bühler, shows, that all those females who are born in the same family,—*i.e.*, all daughters of male Sapiṇḍas—are heirs under Mayūkha Law. Nor is it probable that Nīlakaṇṭha meant to exclude the wives of male Sapiṇḍas, for he brings in the grandmother as a Gotraja relative.

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[1] This passage has been omitted in Colebrooke's Mitāksh. II. 5. 5. note, where the greater part of Nandapaṇḍita's dissertation on this subject has been translated.

[2] The above rendering accords itself in the main with Mandlik's translation. Borrodaile: "And [the next rank is] hers, both from her being begotten under the brother's family name, and there being no further reservation with respect to the gentile relationship (Gotrājātva), it does not particularly specify the same gentile kindred. Neither is she mentioned in the text on the occasion of taking the wealth; [but as next of kin she succeeds]." In this translation the pronoun स्वा is referred to the sister, instead of to the abstract noun स्वगोत्रता।

Mitākshará.

The Mitāksharā finally takes a different view of the meaning of Gotraja than the Mayūkha. It includes in this term all gentiles,—*i.e.*, all those blood-relations who belong to the same family (Gotra),—and this definition, while including the wives, tends to exclude the daughters of Gotrajas, because these, by their marriage, pass into a different Gotra, and marriage is obligatory under the Hindu Law. The daughters can, therefore, come in as Baṇḍhus only. That they do take as Baṇḍhus under the Mitāksharā follows from Vijnāneçvara's observations on the meaning of Sapiṇḍa, in the Chapter on Marriage, and from the fact that he does not say (like Jīmūtavāhana) that Sapiṇḍaship for marriage purposes is different from Sapiṇḍaship as applicable in the Law of Inheritance. To the male Baṇḍhus, as given before, we shall thus have to add:—1. The daughters of the owner's descendants within six degrees; 2. In his father's line, daughters within six degrees, and their female issue within four degrees. The order in which they take is very difficult to ascertain, thus much seeming probable, however, that the sisters take after their brothers. The wives of collaterals may be supposed to come in directly after their respective husbands.

An objection

Against this view of the Mitāksharā Law it has been urged that the Mitāksharā must be supposed to have recogrefuted.

nized the binding force of the texts on the disqualification of women to inherit, and of the corresponding rule that this general disability can only be removed by special texts, because the general authority of the Veda and of Baudhāyana is acknowledged in the Mitāksharā.[1] However, the Mitāksharā nowhere quotes the said Vedic text, nor does the Mayūkha. Another western author, Aparārka, though acquainted with that text, takes it as an explanatory statement only (Arthaveda) and not as a rule (Vidhi).[2] Vijnāneçvara would have explained it in the same way, most probably, if he had chosen to quote it: for their general reverence of the Çruti and Smriti has never prevented the Indian Commentators from explaining away such parts of the old law as did not suit their own system. An implicit recognition of the general capacity of women to inherit may be found in the statement of Vijnāneçvara, that the texts on exclusion from inheritance are applicable to women as well as to men. The answers of the Çastrīs and popular practice equally afford reason to believe that the succession of females was persistently admitted in Western India. In the other provinces the opposite view has carried the day, but it is important to observe that this view, though confirmed by such standard works as the Vīramitrodaya and Smritichandrikā, was not universal either in Benares or Madras, and that clear vestiges of a different current of opinion may be traced in a number of important Digests of these two provinces.

Strangers.

Where no relations are in existence, the inheritance goes to strangers,—such as the spiritual teacher or pupil of the deceased, the Brahman community, especially learned Brahmans, and lastly to the King, whose right of succession does not, however, arise in the case of property left by a Brahman. There is reason to suppose that this last rule does not correspond to actual usage, and that the Kings were unscrupulous in taking any property which was not claimed by immediate descendants. In a remarkable passage of the drama Sakuntalā (Act VI) a king is highly extolled because he has failed to confiscate the property of a rich merchant who had left no son, but a pregnant widow behind him.

Succession to an hermit, etc.

A special line of descent is ordained for the property of members of a religious order. The law on this subject is principally based on a text of Yājnavalkya (II. 137), which has four interpretations: 1. The heirs referred to in this text are three in number, the two last terms forming a Karmadhārāya compound, denoting a religious brother of the same School. The three heirs have to be connected in the inverse order with the three classes of proprietors, who are mentioned in the first half of the text, the spiritual teacher succeeding to the property of a student, etc.[1] 2. There are three heirs, but they have to be read in the direct order, the spiritual teacher succeeding to the hermit as according to Vishṇu.[2] 3. There are four heirs, the member of the same order being an independent heir, who takes on failure of any of the three first heirs. The three first heirs have to be read in the inverse order.[3] 4. There are four heirs, who succeed in their order to each of the three persons mentioned in the first half of the sentence.[4] According to Aparārka, the last term (Akatīrthin) denotes either a member of the same sect, or one dwelling in the same holy place, such as Benares.[5] Nandapaṇḍita shows himself acquainted with all these four doctrines.

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[1] Mandlik, 371.

[2] See *ante*.

Reunion.

The question as to whether the descent of reunited property is governed on the whole by the same rules as the devolution of undivided estates, or whether there exists an altogether separate line of descent in the case of reunited coparceners, is one of the points of contention between the Mitāksharā and the Dāyabhāga. Jīmūtavāhana considers Yājnavalkya's text regarding the devolution of obstructed property to be applicable to reunited as well as to undivided coparceners, except as far as the rival claims of several brothers are concerned, and most of the special rules regarding reunion have been inserted by him in the Chapter on a Brother's Right to Inherit Obstructed Property, by which proceeding the Chapter on Reunion has been excessively shortened in the Dāyabhāga. The Dāyabhāga doctrine has been adopted as usual by the other writers of the Bengal School. Jīmūtavāhana, in his turn, seems to have got his opinion from one of the other Commentators of

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[1] Mitāksh. II. 8; Vīramitr. 202; Sarasvatīvilāsa §§ 614—624; Mādhav. 37-38; Vivādachint.. Jagannātha. Mayūkha. Kamalākara, etc.

[2] Madanaratna, Cūlapāṇi. The same opinion is referred to by Kamalākara, Nīlakaṇṭha, Mitramiçra.

[3] Dāyabh. XI. 6, 35, 36; Dāyakr. I. 10, 35, 36.

[4] Smṛitich. XI. 7. Aparārka.

[5] Vaijayantī XVII. § 1.

LECTURE IX.

Yājnavalkya. Aparārka prefaces the texts of Yājnavalkya on reunion (III. 138, 139) as follows:—"It has been stated that the property of a sonless brother, on failure of a widow, daughters and parents, goes to his brothers. To this (general maxim, Yājnavalkya) adds a special rule." This shows clearly that Aparārka agrees with Jīmūtavāhana, and not with Vijnāneçvara, who says in the corresponding portion of the Mitāksharā (II. 9. 1):—"The author (Yājnavalkya) next propounds an exception to the maxim that the wife and certain other heirs succeed to the estate of one who dies leaving no male issue." The other writers of the Mitāksharā School have in the main followed Vijnāneçvara; only Mitramiçra has explained the Mitāksharā doctrine of succession to a reunited coparcener in a very peculiar manner, which looks like an attempt to reconcile it with the Dāyabhāga doctrine, though he expresses his entire disapproval of that doctrine in one place (p. 205). His own system of succession to a sonless reunited coparcener is based on a casual remark of Vijnāneçvara about a text of Çankha, and stands as follows: Brothers, father, mother, virtuous wife and coparceners, sister, unreunited Sapiṇḍas and Samānodakas. However, this system differs from the Mitāksharā, so much that it can certainly not be viewed as based upon it, and can have no authority even in the Benares School. In the Mithilā School the property of a reunited coparcener, like the property of one undivided, goes first to his widow.

Extent and importance of reunion.

Practically speaking, cases of reunion seem to have become very rare in most parts of India, though I am informed that they are not quite uncommon in Benares. The applicability of the term reunion has moreover been restricted by most writers by means of a literal interpretation of the text of Ṛihaspatī, which states that he who, after previous separation, dwells again with his father, brother, or paternal uncle, is termed reunited. Some writers, however,—such as Nīlakanṭha, Kamalākara, and Mitramiçra,—state this enumeration of relatives with whom reunion may take place to be exemplificative merely, and to include all relatives from whom one may have separated. The writers of the Mithilā School extend the denomination of Samsṛishṭin to all kinsmen between whom a junction of stock has taken place, and this, as pointed out before, seems to have been the original meaning of this term. Leaving aside the remaining rules of the modern Juṛists regarding reunion, I will not omit to note, however, that the subject of reunion, though practically unimportant, is highly interesting from a historical point of view, on account of the light thrown by it on the analogous case of undivided status, and on account of the way in which the Mitākshara Order of Succession to Undivided Estates, as shown before, has been influenced by succession to reunited ones.

LECTURE IX.

LECTURE X.

THE HISTORY OF FEMALE PROPERTY.

Analogies to the Law of Strídhana from the laws of other nations— The Dharmasútras — Meaning of Strídhana in the Smṛitis — Strídhana six-fold — Manu on Strídhana — Vishṇu and Yájnavalkya — Culka — Its real meaning — Kátyáyana and Vyása — Kátyáyana—Devala—Dominion over Strídhana—Nárada— Yájnavalkya—Kátyáyana—Prajápati—Bṛihaspatí—Vyása—Mahábhárata —Devala — Strídhana and inherited property—The Bengal School — Vijnáneçvara — Objections to his theory— It is not in accordance with the real meaning of Yájnavalkya's text — How to put the question — Three inaccuracies in Colebrooke's translation —The first inaccuracy — The second inaccuracy — The third inaccuracy — Mr. Mayne's opinion — Use of the word Strídhana in the Mitákshará — Anomalous nature of Vijnáneçvara's theory —Kamalákara — Bálambhaṭṭa — Haradatta — Nandapaṇḍita — Viçveçvara — Rudradeva — Aparárka — Woman's State in Strídhana —Mayúkha —Víramitrodaya — Smṛitichandriká — Mádhavíya — Varadarája — Sarasvatívilása — Dáyabhága — Raghunaṇdana and Crikṛishṇa — Jagannátha on the share obtained by partition — The share on partition in the other Schools — The Mithilá School — Immovable property in Bombay and South India — Result.

Analogies to the Law of Strídhana from the laws of other nations.

FEW topics can be more interesting to the student of Comparative Jurisprudence than the History of the Proprietary Rights of Women, and to no single chapter of that history is the comparative method better capable of being applied than to the growth of the separate property of women. Thus the ancient laws of the German-Saxons and Anglians, the cousins of the Anglo-Saxons of England, contain an institution which corresponds even more nearly to the Strīdhana of India than the Roman *Dos*, viz., the *Gerade*, which is a collective name for all such species of property as are generally possessed by women only, such as women's dresses, ornaments and household articles and the like, and which can, therefore, be inherited in the female line only. There can be no doubt that such articles as these have originally formed the only constituents of Strīdhana in India, and that it is to this fact that the special rules regarding the descent of Strīdhana are due. In course of time the Strīdhana came to include several other descriptions of property as well, and among these the gift in token of love presented by the husband to the bride is somewhat analogous to the Teutonic *Morgengabe,—i.e.*, a present which the husband used to make to the bride on the morning after the wedding, and the *Çulka*, or bride-price, may be fitly compared to the Teutonic *Wittum*, or bride-price. In Germany, both the *Wittum*, which was afterwards converted into a donation to the wife, and the *Morgengabe* have exercised a very considerable influence on the development of the proprietary right of women.[1] The same may certainly be said of the Indian *Çulka*, which, from having been the bride-price, was made over to the bride herself in aftertimes, and became the subject of a special line of succession apart from the remainder of Strīdhana.[2]

The Dharma-sūtras.

There can be no doubt that, in India as elsewhere, there was a period when women were considered incapable of holding any independent property. A well-known Smriti-text[3] states that women, as well as sons and slaves, can have no property of their own; whatever they acquire they must give up to him who owns them. That the principle here enounced is not a mere theoretical assertion appears from the position of women in the Law of Inheritance. It has been shown in the preceding Lecture that, in ancient times, women were considered incapable of inheriting, and that they do not appear among the regular heirs even in the Code of Manu. Beginning with the Sūtra works, the two Dharmasūtras of Apastamba and Baudhāyana contain but a feeble trace of incipient proprietary rights of women. Āpastamba (II. 6, 14. 9) mentions as an opinion, to which[4] he does not give his assent, the rule that, on a partition of the estate, the wife should be allowed to keep her own ornaments and the property she may have received from her parents and other relatives. Baudhāyana (II. 2, 3, 43) states, that the daughters should inherit the ornaments of their mothers, as many as are presented to them according to the custom of their castes or anything else (that may be given) according to (custom). Another Dharmasūtra, that composed by Vasishṭha (XVII. 46), contains the analogous statement that the mother's nuptial presents shall be divided by her daughters. Such rules as these are highly interesting as containing the first germs of the proprietary right of women and of the special line of descent of female property.

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[1] See Schrœder, Daseheliche Güterrecht Deutschlands, Berlin, 1875.

[2] See the XI. Lecture in Sir H. Maine's Lectures on the Early History of Institutions, for a General History of Female Property.

[3] Manu VIII. 416; Nārada V. 39. A far more recent author than either of these two states that property acquired by mechanical arts by a woman is entirely at the disposal of her husband. Kātyāyana, in the Viramitrodaya, etc. See *post*.

[4] This, as shown by the Commentary of Haradatta, is the correct reading of the passage of Apastamba. According to the reading followed in the Mitākshharā, the furniture in the house would have to be added to the above species of property belonging to a woman on partition, and Apastamba would be made to declare as his own opinion, that both the furniture and the ornaments, but not the property received from relations, shall belong to her. See for this and other *variæ lectiones* Bühler's Apastamba in the Sacred Books, 133-134, notes. The construction put on this passage in the Mitākshharā is probably due to the tendency to make it agree with the texts of other lawgivers. In pronouncing against the right of women to separate property, Apastamba is but consistent with himself, as he considers women, especially widows, as unfit to inherit.

Meaning of Strīdhana in the Smṛitis.

The term Strīdhana, which occurs first in the Dharmasūtra of Gautama, is a compound word made up of *Strī*, woman, and *Dhana*, property. Judging from its derivation, then, it is evidently capable of denoting any species of property belonging to a woman. However, the Translators of Sanskrit Law-books, from Colebrooke downwards, and the Sanskrit dictionaries take it to denote the *separate* property of a woman, and, as far as the Smṛitis are concerned, this statement is fully borne out by fact. Upwards of thirty passages have been examined from the Smṛitis of Gautama, Manu, Yājnavalkya, Nārada, Kātyāyana, Devala, Hārīta, Vyāsa, and others, and the result of this examination has been that, in nearly all these passages, it is possible to take Strīdhana as a technical term denoting the separate property of a woman, while in not a few out of the passages examined, it can absolutely have no other meaning than this. Thus, when Nārada (XII. 92) speaks of the punishment ordained for a bad woman who spends or embezzles the whole wealth of her husband under the pretence of its being Strīdhana, it is clear that the Strīdhana here referred to cannot be the whole property of a woman but that part of it only which is not subject to the control of her husband,—*i.e.*, the Strīdhana technically so called. Again, when Kātyāyana states that property obtained by a woman through skill, or as a gift from a stranger, is subject to her husband's dominion, whereas the remainder is Strīdhana, he evidently means to oppose her Strīdhana,—*i.e.*, her separate property—to her other property of which she may not dispose at her own pleasure. And if Kātyāyana, Yājnavalkya (II. 148) and other authors speak of the Strīdhana which is given or not given to a woman, they would certainly have made use of the more general term property instead, if they had not intended to convey the meaning that the Strīdhana was given to her as her separate property. On the other hand, there are a few passages in which the etymological import of the term Strīdhana clearly shines through. Thus Kātyāyana and Yājnavalkya (II. 145) make use of the term Aprajahstrīdhanam, *i.e.*, literally 'a childless woman's property.' It would be impossible to dissolve this compound in the following manner: the Strīdhana of a childless one. Nevertheless, even in this case, the property meant is the separate property of a woman only. Besides, it must not be forgotten that the word Strīdhana, though commonly used as a technical term, is a compound easily reducible into its parts. Thus in English we may speak of women's dresses as opposed to the dresses of men, but we may also dissolve that compound term into its parts, speaking for instance of an old woman's dress. Similarly, supposing the English term woman's property had come to be restricted in common use to the separate property of a woman, it would still be possible to make use of such expressions as an old woman's property, a young woman's property and the like. The same reasoning applies to such Sanskrit terms as Aprajahstrīdhanam.

Strīdhana six-fold.

The technical character of the term Strīdhana is further shown by the fact that it was considered to require a definition, and we find accordingly an early tradition to the effect that Strīdhana consists of six species of property. Gautama, it is true, is silent on this point. With his usual laconism he gives two brief rules regarding the descent of Strīdhana and of the Çulka, to which I shall have to revert in the next Lecture, but he does not state which particular kinds of property he means to include in these terms. The six-fold character of Strīdhana is recorded in the metrical Smritis of Manu (IX. 194), Nārada (XIII. 8), and Kātyāyana,[1] which contain a *versus memorialis* enumerating singly the six kinds of property of which Strīdhana is made up. Of the six constituents of Strīdhana, three are gifts from the near relatives of the bride, and two others are gifts presented to her at two different stages of the marriage ceremony. There exists some difference of opinion as to the sixth subdivision of Strīdhana, Manu and Kātyāyana stating in general terms that it is a gift presented to the bride in token of affection or love, whilst Nārada calls it the husband's donation. This contradiction may be removed by assuming, with some Commentators,[1] that the term 'a gift in token of love' relates to a gift received from the husband only. The gift in token of love is mentioned immediately after the two kinds of gifts presented during the marriage ceremony. It is, however, not clear whether the 'gift in token of love' represents a gift made by the bridegroom immediately after the wedding, like the German *Morgengabe*, or whether it may include gifts presented on any other occasion.

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[1] Vivādachintāmaṇi, p. 138 (Sanskrit text); Dāyabhāga, IV. 1, 4, etc.

Manu on Strídhana.

It cannot have been for a long time that the Strīdhana was kept within the bounds of the definition just quoted. On the contrary, Manu and Kātyāyana themselves mention several further kinds of Strīdhana besides those six. Manu refers (1) to the *Anvādheya*, or gift subsequent to marriage, which, though included to some extent in the gifts received from the relatives of the bride, is by no means identical with them, as it includes, according to Kātyāyana, gifts received from the kinsmen of the husband; (2) to the gift presented by the loving husband, which, supposing the gift in token of love to be a gift received from the husband on occasion of the wedding, must be explained as a gift received from him on a subsequent occasion like the *Anvādheya*. In another passage of his Dāyabhāga, Manu refers to Strīdhana by the general term *Yautaka* or *Yautuka* (both forms are found in the MSS. and in the quotations), which means literally separate property;[2] and

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[1] Nārāyaṇa: in token of love, *i.e.*, what has been given by the husband at the time of amorous intercourse. (*For the Sanskrit, see Appendix.*) Rāghavānaṇḍa: given by the husband (दत्तं भर्त्रा) Kullūka: given by the husband, etc. (भर्त्रादिदत्तम्) According to others, gifts received from the parents-in-law in return of humble salutations are meant. Nandanāchārya: (*For the Sanskrit, see Appendix.*) This interpretation is founded on a text of Kātyāyana. Jagannātha seems to follow Kullūka (Dig. V. 9, cccclxix).

[2] This is certainly the meaning of *Yautaka* in the only other passage of the Code of Manu (IX. 214) besides the above passage, where this term occurs. 'The first-born shall not appropriate the inheritance to himself,' literally 'he shall not make a *Yautaka* out of it.' Yājnavalkya also (II. 149) speaks of houses and fields which are the *Yautaka*,—*i.e.*, the

LECTURE X.

in the third book of his Code, when referring to Strīdhana incidentally, he mentions vehicles and clothes as the main ingredients of it (III. 52). On the other hand, the Code of Manu uses synonymously with Strīdhana the term 'what has been given to her' (IX. 197, 198), which excludes entirely the idea of Strīdhana obtained by inheritance, industry or other modes of acquisition; and it contains one Sūtra (IX. 200) belonging to that stage of law when ornaments were the chief property of women. Similarly, ornaments are mentioned by Manu (IX. 219) among the objects not liable to partition, and it is natural to suppose that this rule relates chiefly to female ornaments.

Vishṇu and Yájnavalkya.

The two rules just referred to recur nearly word for word in the Vishṇu-sūtra (XVII. 22; XVIII. 44),[1] but in his other doctrines regarding the Law of Strīdhana, Vishṇu agrees more closely with Yājnavalkya than with Manu. Both Vishṇu (XVII. 18) and Yājnavalkya (II. 143, 144) give the following enumeration of the species of property belonging to Strīdhana: 1. The gifts from near relatives. Vishṇu names the father, mother, sons and brothers; Yājnavalkya refers to the father, mother, husband and brothers. 2. Gifts received from the more distant kinsmen. 3. That which the bride has received before the sacrificial fire (at the marriage ceremony). 4. The gift received by a woman

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separate property of each sharer. The Mahābhārata (XII. 12090) says, that each man shall obtain that which is his *Yautaka*, 'separate property.' Aparārka (Com. on Yājn. MS.) is undoubtedly right, therefore, in explaining *Yautakam* in the above text of Manu by पृथग्धनम् 'separate property,' and so is Nārāyaṇa in interpreting it by 'Strīdhana.' The same view is taken by Kullūka, who interprets it by 'the mother's wealth,' and goes on to quote an analogous text of Gautama containing the word Strīdhanam instead of *Yautakam*. Nandanāchārya says it means property received from the father's family. Rāghavānanda refers it to gifts received from the husband (*for the Sanskrit, see Appendix*). Medhātithi says it denotes Strīdhana, a woman having absolute control over such property (*for the Sanskrit, see Appendix*). What follows cannot be quite made out in the MSS. It is, however, clear that Medhātithi refers to the opinion of certain Commentators, who take *Yautaka* to mean *Saudāyika* property as explained by Kātyāyana, and to the view taken by another set, that the savings of women from the household money given them daily by their husband are meant. For the interpretations given in the Digests, see next Lecture.

[1] The first text, which is quite identical with Manu IX. 200, has been taken to represent an earlier stage of the law, when a woman's absolute power of disposal over the ornaments worn by her ended with the life of

on supersession by a second wife. 5. The gift subsequent. 6. The Çulka, or nuptial gift of the husband. Yājnavalkya adds the word *ādya*, "etc.," to his enumeration according to the one reading of this much-canvassed text, but it will be seen afterwards that the correctness of this reading is liable to considerable doubt.

Culka.

As regards the meaning of Çulka, it is clear that this term, conformably with its original signification of "price of a commodity purchased," must have been a term denoting the bride-price, which, as shown in Lecture IV, was a recognized institution all over India, and has continued so, either openly or under various disguises, down to the present day. Nevertheless, in order to be included among the constituents of Strīdhana by Vishṇu and Yājnavalkya, it could not have retained its original signification of 'bride-price'[1] in the time of these two authors, though Vijnāneçvara and many other Commentators, in commenting on these two texts, say, it denotes the price paid to the parents for the sale of their daughters. Vṛiddha Manu (Varad., p. 50) denotes wealth other than Çulka, which has been received from the husband, as *Arhaṇa*, 'a token of respect;' thus showing that the Çulka was, in his opinion, a gift from the husband or bridegroom to the bride. The same opinion is put forth by Vyāsa, and Kātyāyana in one place speaks of a bridegroom who goes abroad after having given Çulka and Strīdhana to his future wife. Another text of Kātyāyana, which contains his definition of Çulka, is far from clear, as may be seen from the various constructions put on it by the Commentators. Jagannātha (V. 9, ccccIxviii), as translated by Colebrooke, has the following version: "The trifle which is received by a woman as the price (or reward) of household (labour), of (using household) utensils, of (keeping) beasts of burden, of (watching) milch-cattle, of (preserving) ornaments of dress, or of (superintending) servants, is called her 'perquisite.'" In his comment on this text, Jagannātha quotes Miçra as the authority for this inter-

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her husband (Mayr. p. 164; Mayne. § 5631). This view rests on Nandapaṇḍita's gloss on Vishṇu (XVII. 22). However, Nandapaṇḍita's interpretation is hardly reconcilable with the Laws of Sanskrit Syntax and Composition, and opposed to all ancient authority, as may be seen from the remarks of Vijnāneçvara, Dhava, Nārāyaṇa, Kullūka, Rāghavānaṇḍa, and others on the identical passage of Manu.

[1] See West & Bühler, 273—283.

pretation, and adds: "The meaning is, what the master of the house, pleased with the performance of the household business, gives (to a woman), is her perquisite." The Madanaratna, Smṛitichandrikā, Vīramitrodaya, Mayūkha,[1] Sarasvatīvilāsa, and Vaijayantī take the identical text of Kātyāyana as referring to a present received from the bridegroom on occasion of the nuptials. Accordingly they explain Çulka as denoting the price or value of household utensils, beasts of burden, etc., which has been paid by the bridegroom to the bride, or to her parents to be delivered to her afterwards, because those objects themselves are not available. The Madanaratna, as quoted in the Vīramitrodaya, states the meaning to be this, that the bridegroom shall not deliver the money itself, but female ornaments of equal value. A third explanation may be found in Jīmūtavāhana's Dāyabhāga (IV. 3, 20), Lakshimadevī's Vivādachandra and other works of the Bengal and Mithilā Schools. They read Karmiṇām, 'workmen,' instead of Karmaṇām, 'labour,' and refer the term Çulka to a bribe which is given to a woman by workmen or artists in order to induce her to exercise her influence with her husband in their favour. The reading Karmiṇām is found in Jagannātha's Digest and in the Vaijayantī as well, but is there interpreted by 'slaves' or 'slaves and the like.' As Kātyāyana, in the other text which has been previously referred to, treats the Çulka as a present from the bridegroom, it may be presumed that the second of the above three interpretations is the correct one.

Its real meaning.

The great diversity of opinion among the Commentators regarding the meaning of Çulka, which led some of them to distinguish two different sorts of Çulka, may perhaps be considered as a sign that local custom in their time differed in regard to this institution. However, the opinion of those who defined Çulka as the bride-price looks rather like an etymological guess, than like a historical reminiscence from that remote period when the Çulka really was the bride-price. The Smṛiti-writers, however they may differ in detail, are certainly unanimous in viewing the Çulka as a present from the bridegroom or husband to the bride, and the Çulka with them has retained its nature of bride-price so far only that, on the death of the wife, it reverts to her own family.

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[1] See Smṛitich. IX. 1, 5; West & Bühler (first ed.) II, p. 72; Mayūkha, p. 92 (Mandlik); Sarasvatīvilāsa, § 267. Mr. Foulkes's translation differs slightly from the above reading. However, the gloss in the Sarasvatīvilāsa shows that Rudradeva's views agree precisely with Devaṇṇabhaṭṭa's.

Kátyáyana.

To revert from this digression to the history of Strīdhana, it should be observed that Katyāyana has treated the subject of Strīdhana more copiously than any of his brethren, his texts on Strīdhana being more than thirty in number. Everything in these texts tends to show the advanced stage of development reached by the Law of Strīdhana in the time of Kātyāyana. Thus he gives accurate definitions not only of most kinds of Strīdhana that are mentioned by the more ancient authors, but he adds to them the Saudāyika, which, according to him and Vyāsa, is a comprehensive term including all gifts received, whether before marriage, or after it, in short at any time, from the husband, from his relations, or from the woman's relatives. Saudāyika means literally 'the gift of affectionate kindred,' and such characteristic terms as this would naturally spring up in a period when the need of systematization began to be felt and the increasing proprietary rights of women rendered it necessary to distinguish between property inherited or acquired by them, and property obtained through the kindness and liberality of their relatives, which was alone at their uncontrolled disposal. Kātyāyana is careful to assert the absolute dominion of a woman over her Saudāyika, even in the case of immovables, though he dissuades in another text from giving immovable property to a woman; and he says similarly of Strīdhana, which term he uses synonymously with Saudāyika, that the husband, father, sons and other relatives of a woman may never use it without her consent and are liable to punishment, and to restore it with interest, in case they seize it forcibly. To give Strīdhana to the best of their power to their wives, daughters and other females committed to their care is enjoined as a moral duty incumbent on parents, brothers, husbands and guardians; and a promise to that effect made by the father is declared as binding on the sons as a paternal debt. The women, on their part, have to requite this consideration shown to them through a loving and respectful conduct and amiability of manners towards their natural protectors. Certain gifts received from relatives are expressly designed as property obtained in return of humble salutations, literally of making an obeisance at the feet (Pādavaṇḍanika), and wealth gained by loveliness (Lavaṇyārjita).[1] Vicious wives, adulteresses especially, are declared unfit to possess Strīdhana. Many variations of reading occur in these texts of Kātyāyana, of which the only important one relating to the meaning of Adhyāvahanika Strīdhana has been fully discussed by Dr. G. D. Banerjee (p. 277 *et seq.*) As an additional argument in favour of his view, that the Adhyāvahanika does not merely include gifts received from the father during the bridal procession from the father's to the husband's house, I may mention that the reading of the Mitāksharā (Piturgṛihāt),[2] which removes all ambiguity on this head, is also found in the Smṛitichandrikā, Sarasvatīvilāsa, Mayūkha, Madanapārijāta, Vīramitrodaya, Vivādatāṇḍava, Vaijayantī, Bālambhaṭṭaṭīka, Aparārka's Commentary on Yājnavalkya and other works,—in short, in nearly all works outside of the Bengal and Mithilā Schools. Even in these two Schools, Jagannātha and Vāchaspati-miçra, though reading Paitṛikāt instead of Piturgṛihāt, agree with Kullūka in explaining this reading in the same manner as the reading Piturgṛihāt is explained by the author of the Mitāksharā and the rest. Although Jīmūtavāhana is wrong in restricting the Adhyāvahanika Strīdhana to presents received from the parents of the bride, it does not seem to include gifts from strangers. There is another important text of Kātyāyana, which states that all property acquired by a woman by mechanical arts (such as painting or spinning), or given to her through affection by a stranger, shall not be considered as her Strīdhana. It may be noticed, finally, that Kātyāyana is careful to exclude from Strīdhana all property given to a woman under certain conditions (*e.g.*, ornaments to be worn at festival occasions only), or with a fraudulent design (*e.g.*, in order to cheat one's coparceners of their share of certain property under pretence that it had been given toa daughter). Another limitation which Kātyāyana puts on gifts of Strīdhana concerns their amount, which, according to him, is not to exceed two thousand annas in value; nor must immovables be given. The fact that a rule of this kind had become necessary, illustrates the extent which donations of Strīdhana must have assumed even before the times of Kātyāyana. The last-mentioned rule is common to Kātyāyana and Vyāsa, and the latter writer is indeed on most points in accordance with Kātyāyana, several other of his texts on Strīdhana agreeing literally with Kātyāyana's.

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[1] The Sarasvatīvilāsa, § 250, quotes a third text containing the word Saudūyika. "Vishṇu: 'A woman may acquire Saudāyika according to her desire.'" This text is, however, not found in the Vishṇu-sūtra, and it is not the only spurious text quoted in the Sarasvatīvilāsa.

[2] Others read Prītidatta, "gift in token of love," and take this text of Kātyāyana to contain an explanation of the term Prītidatta, occurring n Kātyāyana's and Manu's enumeration of six sorts of Strīdhana.

Vyása.

Devala.

No other author gives such a wide extension to the meaning of Strīdhana as is done by Devala in a text stating that wealth received for maintenance (Vṛiṭṭi), her ornaments, her Çulka and her gains (Lābha) shall be the Strīdhana of a woman, and shall be exclusively enjoyed by her. For Vṛiṭṭi the Vīramitrodaya reads Vṛiddhi, and asserts that this term is explained in the Smṛitichandrikā to mean property given by the father or other relatives for increase of prosperity. But those MSS. of the Smṛitichandrikā which I have been able to consult, and those used by Mr. Krishnaswamy Iyer for his English translation, exhibit the reading Vṛiṭṭi, which is certainly the more appropriate reading of the two, and is found in all the other Digests as well. The term Vṛiṭṭi is said to denote funds given by the father or other relatives for the subsistence of a woman (Madanaratna, Smṛitichandrikā, etc.), or means of subsistence given by the heirs (Vivādatāṇḍava), so that the sense is hardly affected by this difference of reading. The term Çulka must, of course, be referred, as in the other texts, to a gift received from the bridegroom on account of the nuptials, and is actually explained so in the Vivādachintāmaṇi. The term Lābha, 'gain, acquisition,' being naturally more general and vague than any of the terms preceding it, has been interpreted in three different ways, *viz.*, as meaning either—1, interest or profit accruing from Strīdhana put out at interest[1] (Çrīkṛishṇa and other Commentators on Dāyabhāga, IV, 1, 15; Mayūkha, Sarasvatīvilāsa); or 2, property received from relatives (Ratnākara, Vivādachintāmaṇi, Jagannātha's Digest, V. 9, ccccl xxviii); or 3, what has been given to a woman in honour of Parvatī or Gaurī or another goddess, in a ceremony addressed to such goddess (Smṛitichandrikā,[2] Vīramitrodaya, Sarasvatīvilāsa). The ordinary meaning of Lābha, no doubt, is 'gain, profit,' and it is more probable that Devala himself meant to employ the word in that sense than that he took it in the sense of gifts, though the main current of modern authority is in the latter direction.

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[1] At the present day, where the woman's dower is high, it is put out at interest. Borrodaile and Krishnaswamy Iyer.

[2] (*For the Sanskrit, see Appendix.*) The English translation does not

Dominion over Strīdhana.

The extent of a woman's power over her Srtīdhana according to the Smritis, which is touched upon in several of the texts hitherto quoted, will have to be specially considered; and it seems advisable, for reasons which will appear afterwards, to treat the whole question regarding a woman's power over her estate in connection with this subject. Little on this subject is to be found in the earlier authors, in whose time the right of women to inherit and their claim to separate property was but slowly struggling into existence. Gautama states (XVIII. 1) that a wife is not independent with respect to the sacred law, and this statement corresponds to the well-known and often recurring maxim, by which perpetual tutelage over women is ordained. Some of Apastamba's Sūtras afford an interesting glimpse into a phase of the law, which knew of no other property of a wife than that which she had in common with her husband. All acquisitions were looked upon as common to the husband and wife; but the power of alienation was reserved for the husband, though it was declared to be 'no theft,' if the wife were to spend money on occasions of necessity during his absence.[1] In the other Dharmasūtras the existence of separate property of a woman is acknowledged, but it is not till we come to the Code of Manu that we meet with rules (III. 52; VIII. 29; IX. 200), declaring as punishable in the relatives and guardians of a woman any attempt to appropriate the ornaments of a woman, or her Strīdhana, or her goods generally;[2] and on the other hand, with the rule that no woman shall ever appropriate to herself or expend funds belonging to the common family estate or to the separate

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quite agree with this reading. Dr. Bühler explains that, in ceremonies addressed to Gaurī, women whose husbands are living, receive presents of money, ornaments, etc., in return for their attendance, which is viewed as essential in such ceremonies. West & Bühler's Digest (first edn.), II, p. 76.

[1] Apastamba, II. 6, 14. 16—18; II. 11, 29. 3, and notes.

[2] The Commentators Medhātithi, Govindarāja, and Kullūka explain (on VIII. 29) that such attempts are generally made by covetous relatives under pretence of administrating the goods of a woman, of which they are the presumptive heirs.

property of her husband without his permission. Rāghavānanda, in his gloss on this text, states with justice the purport of this rule to be this, that a woman shall have no dominion over any other property except the textual Strīdhana as described by Manu.[1] This interpretation, which agrees with the view taken by Kullūka, Nārāyaṇa, and Nandanāchārya, is no doubt the correct one. It is true that some Digest-writers differ from it, and take this text as containing a restriction on a woman's power over her own separate property, as we shall see presently.

Nárada.

Occasional attempts on the part of women to make away with the whole or part of the family property are equally recorded by Nārada. He states (XII. 92) that a woman who spends or embezzles all her husband's wealth under pretence of its being her Strīdhana shall be banished from his house. Another text, which can be traced to the older recension of the Nārada-smṛiti,[2] states, that even over property presented to her through affection by her husband, a woman has no absolute dominion, in case it consists of immovables. It will be seen that this text, which is quoted in all the Schools, has exercised a considerable influence on the formation of the Modern Law on the subject of a woman's dominion over her Strīdhana. In several other texts, which, though connected with this text, have not passed into the authoritative Digests, Nārada declares the general incapacity of women to undertake valid business transactions, especially transfers of property (I. 3, 27—30).

Yájnavalkya.

Yājnavalkya (II. 147) states, that a husband is not liable to make good, unless he chooses, Strīdhana taken by him during a famine, or for the performance of some religious duty, or during illness, or while under restraint. The last term is by the oldest Commentators referred to one bound with a chain and the like (Aparārka), or confined in a prison or under corporeal penalties and the like (Vijnāneçvara).[1] The later writers are more explicit about it, the Vīramitrodaya stating that one incarcerated by the King for non-payment of a fine, or the like, is meant; whereas the Dīpakālikā, Smṛitichandrikā, etc., refer it to one put under restraint by a creditor, the Smṛitichandrikā adding that the distress must be of such a kind as cannot be got rid of except by using the Strīdhana. The Vivādachintāmaṇi stands alone in taking Sampratirodhaka as an epithet used to qualify the term illness, restricting it to such kinds of disease as prevent the husband from following his avocations. It needs not to be pointed out that Yājnavalkya, by restricting the husband's power over Strīdhana to a small number of well-defined cases, makes the wife absolute owner of it in every other case.

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[1] (*For the Sanskrit, see Appendix.*) Nārāyaṇa, in remarking on the term स्वकात्, states distinctly, that it refers to property other than Strīdhana. The difficult term निर्हारं in this text is also subject to some difference of interpretation, being either taken to mean making a hoard of it for the purpose of buying jewels, ornaments and the like (Kullūka, Rāghavānanda), or 'expenditure' (Nandinī, Mayūkha, etc.), or 'appropriating and then spending it' (Nārāyaṇa).

[2] See before.

Kátyáyana.

Of the detailed provisions of Kātyāyana on the subject under discussion, some are contained in the texts quoted before. In speaking of Saudāyika property, he says expressly, that women have power over it at any time, both in respect of donation and sale, even in the case of immovables. If I am right in assuming that Saudāyika and Strīdhana are mutually convertible terms in the terminology of Kātyāyana, it follows that all sorts of Strīdhana noticed by him are equally at her uncontrolled disposal. It will be seen afterwards that many of the later Jurists, especially Devaṇabhaṭṭa, take a different view of the matter. But everything which Kātyāyana says on the subject of a woman's power over her Strīdhana, especially the elaborate restrictive rules laid down by him as to a husband's, father's or other male relative's power over Strīdhana in times of distress, tend to prove the fallacy of this view. Where the Strīdhana has been forcibly taken, it must be restored with interest, and a fine has, moreover, to be paid; but where the consent of the woman has been obtained, it is not necessary to repay more than the principal, and it may be paid back at convenience. Only in case the husband should have taken another wife, and should neglect his first wife, he shall be compelled to restore his first wife's Strīdhana, even though amicably lent to him, and he shall also be forced to supply her with food, clothing, and dwelling, or to deliver to her a corresponding part of the family property in case he does not make due provision for her wants voluntarily. On the other hand, a disobedient, shameless, spendthrift, or adulterous woman is not held worthy of Strīdhana. This rule, which is usually taken to mean that a woman of this description must either not receive any Strīdhana or relinquish that which had been given to her, is in the Smṛitichandrikā interpreted as implying that she may not alienate her Strīdhana at will. But the correctness of this interpretation seems questionable. As for the rights of a woman over property other than Strīdhana, the widow, according to Kātyāyana, takes a restricted estate only, as her dominion over her husband's property does not extend to the right of gift, mortgage or sale, and as she is enjoined to make a sparing use of it, the property reverting after her death to her husband's former coparceners, who might easily control her in her dealings with the property inherited from her husband, as she was expected to stay with them and to look upon them as her guardians. On the other hand, the widow is not only permitted, but directed by Kātyāyana, to make liberal gifts for pious purposes; and there is another text of Kātyāyana under which the widow is enjoined to spend her husband's Dāya, according to pleasure, after his death, but to preserve it during his lifetime. Here the term Dāya is ambiguous, as it may denote either a gift of the husband or his entire property. The Commentators are at variance: but as this text is immediately followed by one declaring the widow's right to inherit the estate of her husband, it seems reasonable to refer the term Dāya to inheritance.

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[1] Aparārka says: (*For the Sanskrit, see Appendix.*) The Petersburg Dictionary translates the term Sampratirodhaka in the text of Yājnavalkya by 'self-defence.' Sarasvatīvilāsa (§ 284), quoting Vijnāneçvara, reads when he is taken into custody, or captured in war, for (*for the Sanskrit, see Appendix.*)

Prajápatí.

Prajāpatī asserts in stronger terms than Kātyāyana even the widow's obligation to make gifts for charitable and pious purposes out of the property inherited from her husband, and as he is careful to extend her Right of Inheritance to immovables, it follows that for this species of property also her own power of disposal is absolute for the purposes contemplated.

Bṛihaspatí.

Bṛihaspatī ordains that a sonless widow shall take the movable, but not the immovable, estate of her husband. This goes to show that over immovable property in general women were to have no absolute right in the opinion of Bṛihaspatī. He states, however, that immovable or other property, which a woman has received from her father-in-law, cannot be taken from her after his death by her sons.

Vyāsa. Vyāsa states that a woman may use at pleasure gifts received (from others) and property received from her husband.[1] He also refers to the property of a maiden,—*i. e.*, to her wedding presents, of which he says her relatives can never claim a share.

Mahábhárata. A text from the Mahābhārata contains the rule that the husband's property is destined to be used, but not to be wasted, by the widow.

Devala. Devala speaks of the husband's power over his wife's Strīdhana in similar terms as Yājnavalkya. The husband is not allowed to use it except when he is in distress himself, or in order to relieve the distress of a son. In the case of its idle expenditure or consumption, he is bound to repay it with interest.

Strídhana and inherited property. In looking back on all the texts quoted in this Lecture, the development of Strīdhana and of the proprietary rights of women in general will be found to have gone hand in hand. Those writers who, as shown in the last Lecture, deny the right of females to the inheritance in every case, or admit them as heirs in some exceptional cases only, take an equally narrow view of the right of women to possess separate property or do not recognize any such right in them. Those writers, on the other hand, who, like Kātyāyana, Yājnavalkya, Brihaspatī, Devala, and others, recognize the widow as an heir, acknowledge equally the right of women to possess considerable independent property, which must never be taken by any male relative except the husband, who has a right to use it in certain cases of distress. It is true, that, as regards the origin of this separate property of a woman, it includes neither property acquired by manual labour, nor what she may have inherited. It consists, even according to Kātyāyana (though not according to Devala), entirely of gifts received from relations, but these gifts in order to be designed by so many names according to the different occasions on which they had been received, must have assumed a conventional character. Custom obliged the family members to bestow them even against their will on their wives, daughters, daughters-in-law, and sisters. But the right of a woman over inherited property was constantly kept distinct from her power over her separate estate, the latter being far greater than the former.

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[1] Aparārka explains and amplifies this text as follows:—(*For the Sanskrit, see Appendix.*) She may use that gift, or what she has received from her husband, in a manner not opposed to the law even without the permission of her brother-in-law or other (relations).

The Bengal School.

The later Jurists, in dealing with the texts on Strīdhana, might have recourse to their usual method of taking the most recent texts for the basis of their disquisitions, because they came very near to the notions of their own age and contained the fullest exposition of the law on the subject. This course has been deliberately followed by the writers of the Bengal School, who have based their rules mainly on the texts of Kātyāyana, and on the principle deduced from them that Strīdhana is that property of a woman which she may give, sell or use independently of her husband's control. This view may be termed the conservative one. It is put forth in an elaborate form in the Dāyabhāga, but Jīmūtavāhana has borrowed it, no doubt, from earlier Commentators, and the texts on which it is founded are quoted with approval in such early works as Aparārka and the Smṛitichandrikā.

Mitákshará theory.

However, the ambiguity of the term Strīdhana might give rise to an entirely different view of the matter at a time when the unsophisticated writers of the Smṛiti period had been succeeded by a set of learned Commentators, who took delight in philological and etymological inquiries, and did not scruple to assign a different signification to a term than that which it had in popular usage. The opinion that Strīdhana, conformably to its etymology, denotes the whole property of a woman, might spring up naturally enough among the Commentators of the Yājnavalkya and Smṛiti, because that work tacks on the particle *ādyam*, &c., to its enumeration of the constituents of Strīdhana, and treats of succession to a woman's property in two different places. The two passages (II. 117 and II. 143—145) might be taken as intended to supplement one another, and the theory developed from them: that Strīdhana, "woman's estate," is a general term including all property acquired in a legitimate manner by a woman.

Objections to this theory.

Now this is at first sight a thoroughly revolutionary theory. If the technical signification of Strīdhana is annulled, the consequence must needs be that all wealth, however acquired by a woman, has to be considered as her independent property, and must pass in that peculiar line of descent which was expressly devised for her separate property only. It is hardly a matter of surprise, therefore, that this theory, though put forth by no less an authority than Vijnāneçvara, has encountered strenuous opposition from other Hindu Commentators, and has been denounced as anomalous by the Highest Judicial Authority. It has been repeatedly denied, moreover, that the theory in question has been put forth at all by Vijnāneçvara, and this view has been elaborately worked out quite recently by such an eminent author as Mr. Mayne (§§ 524-525). It will not be superfluous, therefore, to devote a brief discussion to this important subject. I remark by way of Introduction that an independent examination of the whole subject has caused me to arrive in the main at the same conclusions in regard to the principal questions involved as those asserted by Messrs. West & Bühler and more recently by Dr. G. D. Banerjee.

It is not in accordance with Yájnavalkya's text.

On one point I am entirely in accordance with Mr. Mayne as well. Yājnavalkya himself has evidently never thought of using the term Strīdhana in any other than a technical sense. He agrees in that respect with the other Legislators. Moreover it appears quite doubtful whether the reading Ádyam is the correct one. It has long been known that Jīmūtavāhana reads Chaiva, instead of Ádyam, —*i.e.*, that he places a mere expletive particle at the end of the text of Yājnavalkya instead of terminating it with an 'etc.' Now the same reading Chaiva for Ádyam is found in the old Commentary of Aparārka, and what is even more important, the analogous passage in the Vishṇu-smṛiti, which enumerates the constituents of Strīdhana in precisely the same manner as is done in the Yājnavalkya-smṛiti, has also no Ádya appended at the end. The Vishṇu-smṛiti very often contains the very Sūtras which the author of the Yājnavalkya-smṛiti has versified. How awkward and out of place that 'etc.' is will appear very clearly by considering the next verse in the Yājnavalkya-smṛiti, which runs as follows: that which is given to the bride by her Bandhus, Çulka, and Anvādheyaka,—these her kinsmen take if she die without issue. This verse and the preceding one on the constituents of Strīdhana have to be read together. Now the second verse mentions three further constituents of Strīdhana, and it is very difficult to see how this could have been the case if the preceding verse had terminated in the original work of Yājnavalkya with the comprehensive word Ádyam, 'etc.' Granting, however, for argument's sake, that the reading Ádyam is the correct one, it does not follow that Vijnāneçvara has interpreted it correctly. On the contrary, the term Ádya or Ádi, which means literally 'and the like,' and occurs often at the end of an enumeration, can only be used to include such objects as are similar in character to those previously mentioned. Therefore, in the passage in question, it cannot mean "any other separate acquisitions" as Vijnāneçvara contends; but it can only refer to such acquisitions of a woman as are similar to other objects of which Strīdhana consists. It may mean, as one of the Southern Commentators (Mādhava) explains, property purchased with what is given during the bridal procession or other such acquisitions; or it may denote presents of another kind than those previously mentioned; or it may be a mere expletive word, as Dr. Burnell supposes.

How to put the question.

Granting all this, granting that Vijnāneçvara, misled perhaps by a false reading, has grievously misunderstood the text before him, or that he has misinterpreted it intentionally, the whole question does not turn upon the philological skill of Vijnāneçvara and the soundness of his method of interpretation, but it may be summed up in this: Does Vijnāneçvara actually hold that property acquired by a woman in any way whatever is her Strīdhana, or does he not think so? It appears probable that no doubt would ever have been entertained about Vijnāneçvara's opinion on this point if it had not been for three slight inaccuracies in Colebrooke's translation of the passage in question, and I may be allowed to remark incidentally that this fact points to the necessity long ago urged by Professor Goldstücker of a revision of Colebrooke's Translation of the Mitāksharā. In order to expose the misconceptions that have arisen, it will hardly be necessary for me to quote the whole passage from the Mitāksharā.

Three inaccuracies in Colebrooke's translation.

The first inaccuracy.

The omission in Colebrooke's translation of two Sanskrit particles heading the fourth clause in that Section of the Mitāksharā led the High Court of Bombay to believe that the property acquired by a woman through inheritance from her husband is not Strīdhana according to the Mitāksharā. This is the one fatal inaccuracy in Colebrooke's translation of that passage. I must quote in full the texts of the first clause in order to be able to point out the second inaccuracy which has been discovered like the first by Dr. Bühler, and the third inaccuracy or rather indistinctness which does not seem to have been noticed

The second inaccuracy.

hitherto. The clause in question contains Vijnāneçvara's *verbatim* explanation of the before quoted text of Yājnavalkya on Strīdhana. The translation of this text in Colebrooke's version runs as follows: "What was given to a woman by the father, the mother, the husband or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife, as also any other (separate acquisition), is denominated a woman's property." What follows in the Mitāksharā is a running commentary on this verse. I will first tell you how I propose to translate it: "That which was given by the father—as a compensation for the supersession (thus far according to Colebrooke); likewise as indicated by the word *Ádyam* (etc.), property which she may have acquired by inheritance, purchase, partition, acceptance or finding; all these descriptions of property are denominated woman's property; (by whom?) by Manu and the other ancient sages." It will be observed that, according to this translation, each clause in the text of Yājnavalkya has a clause corresponding to it in the commentary. In Colebrooke's translation, on the contrary, the three last clauses are merged into one and are closely connected with what precedes them. He translates: "And also the property which she may have acquired by inheritance, purchase, partition, seizure or finding, are denominated by Manu and the rest woman's property." The difference between Colebrooke's translation and the version proposed before is chiefly due to the fact that the two words '*Etat*,' these descriptions of property, and *Ádyam*, 'etc.,' have been omitted in Colebrooke's translation. This is the second inaccuracy.

The third inaccuracy.

Thirdly, it would appear from Colebrooke's translation as if the well-known Legislator Manu were the authority for Vijnāneçvara's assertion that property acquired by inheritance, etc., is also included in the term woman's property. In reality all Vijnāneçvara means to say is that the phrase, it is said or denominated (Prakīrtitam) is used in this text of Yājnavalkya as in other texts, in order to represent the preceding definition of Strīdhana as the authoritative emanation of some ancient sage, whether the mythical Manu or another. A precisely analogous passage may be found in Yājnavalkya (I. 200), where the term 'it is said' (Prakīrtitan) occurs at the end of a verse just as in the definition of Strīdhana, and is explained by Vijnāneçvara in exactly the same manner as here—*viz.*, as referring the text in question to an enunciation of Manu or another sage. In other works, too, the Commentators explain this phrase in the same manner.

Mr. Mayne's opinion.

It is by the inaccurate translation of Colebrooke that Mr. Mayne's theory regarding the view taken by Vijnāneçvara of Strīdhana has been called forth. In remarking on this Section of Colebrooke's Translation he says: "Vijnāneçvara repeats and expands this text (the text of Yājnavalkya on Strīdhana), adding 'and also property which she may have acquired by inheritance, purchase, seizure or finding, are denominated by Manu and the rest woman's property.' Now Manu certainly says nothing of the sort. His enumeration is contained in the fourth clause of the same Section of the Mitāksharā: It is so strictly limited to personal gifts that Vijnāneçvara and others think it necessary to add that the six classes of gifts there stated are not exclusive of any other sorts of property." The second proposition is perfectly true, but as I have just shown, Vijnāneçvara has never meant to say that the sentiment in question occurs in the Code of Manu. Yet the supposed attempt on the part of Vijnāneçvara to disguise the real opinion of Manu and to gain a support for his own theory regarding the extent of Strīdhana from this fabricated authority, appears to have in part prompted the first proposition of Mr. Mayne as well. But what really lies at the bottom of his entire theory is the second inaccuracy in Colebrooke's translation. The principal part of this theory may be stated mostly in Mr. Mayne's own words as follows:—Vijnāneçvara includes in the term Strīdhana property acquired by a woman in any way whatsoever. Yājnavalkya, on the contrary, includes in that term no other kinds of property except those which he mentions expressly in his definition of Strīdhana, as well as special gifts made to a woman by her own family and certain gifts made to her as a bride or a superseded wife. In treating of Succession to Strīdhana, however, Vijnāneçvara does not refer to Strīdhana as defined by himself, but to Strīdhana as defined by Yājnavalkya. The special line of succession which he ordains for Strīdhana applies only to Strīdhana in that restricted sense, and certainly not to property inherited from a male, the devolution of which had been exhaustively treated in an earlier Section of the Mitāksharā. It will be seen that this theory is based on the presumption of a difference of opinion existing between Vijnāneçvara and the author upon whom he is commenting. It results, however, from what has been said that the distinction here proposed between the opinion of the Commentator of Yājnavalkya and the opinion of Yājnavalkya himself has no foundation in fact. It may be added that an assumption of this kind labors under a great antecedent improbability. The relation of a Hindu Commentator to the work commented upon by him is one of strict reverence, and the Commentators of such sacred works as the Smṛitis in particular, blend their own views entirely with the views contained in those works. However they may twist the sayings of the different Smṛitis in order to make them agree with one another, or with some favourite theory held by themselves, they would never venture to differ from them in outward semblance.

Use of the word Strídhana in the Mitákshará.

The result of the foregoing discussion may be summed up in this, that any attempt to restrict the extent of the various kinds of property classed as Strīdhana by Vijnāneçvara must invariably end in failure. Any one indeed who has access to the Sanskrit original will readily admit the correctness of the view that, according to Vijnāneçvara, the term Strīdhana means simply woman's estate,—*i.e.*, property of any description belonging to a woman. This use of the word Strīdhana may be traced throughout the whole Section of the Mitāksharā on Strīdhana.[1] Several instances of it, which do not seem to have been noticed as yet in connection with this subject, occur in the Section on Seizure of a Woman's Strīdhana by her husband in times of distress (II. 11, 31—34). What is even more important, the opening words of that Section contain the phrase—he may take his wife's goods. Yet in the text of Yājnavalkya immediately following, the goods referred to are evidently not property of a woman generally, but her Strīdhana, and are designed by that name. This shows that no difficulty was capable of deterring Vijnāneçvara from the pursuit of his theory that the two terms, a wife's goods and her Strīdhana, are convertible. Another characteristic passage of this kind in the Section on the Daughter's Right of Inheritance has been adduced and discussed in the last Lecture. It is equally clear that, in an earlier part of the Mitāksharā (I. 2, 9) the term Strīdhana is used in reference to the whole property of a woman, and it is a significant fact that Vijnāneçvara considers the two texts of Yājnavalkya quoted in Mit. I. 2, 8, and II. 11, 34, as intended to supplement one another, though the one refers to a share obtained on partition, the other to a species of Strīdhana.

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[1] This, however, does not come out in Colebrooke's Version of the Mitāksharā.

Anomalous nature of Vijnáneçvara's theory.

The existence of Vijnāneçvara's anomalous theory regarding the extent of Strīdhana being undeniable, the only serious objection to be raised against it is its anomalous character. It is obvious that, by demurring to the authority of Vijnāneçvara in this one instance, a dangerous precedent will be established for all other cases in which a difference of opinion exists between Vijnāneçvara and his brethren. Yet this course has been adopted by most of the British Jurists. I imagine there can be no other justifiable reason for such a strong deviation as this from an established doctrine of Vijnāneçvara than by proving that it is either absolutely inconsistent with other doctrines held by the same author or with custom. However, on examining everything Vijnāneçvara has to say on the subject of Strīdhana, it will be found that not only is he perfectly consistent with himself, but his views regarding the constituents of Strīdhana will entirely lose their anomalous appearance by being combined with what he says about the nature and incidents of Strīdhana. His views regarding the descent of Strīdhana in particular have evidently been formed with reference to his peculiar doctrine regarding the wide extent of Strīdhana. Moreover, if Vijnāneçvara's theory were a mere philological whim, it would probably not have been followed by any other Commentator. It has been repeatedly asserted, indeed, that Vijnāneçvara stands quite or nearly alone with his view. The fallacy of this assertion has been illustrated by Dr. G. D. Banerjee by means of a detailed review of everything to be found on the subject in the other translated Sanskrit Commentaries and Digests. It is important to observe that all the evidence which has been collected from hitherto unpublished works tends to confirm the theory of the Mitāksharā even more strongly than the evidence brought together from printed books.

Kamalákara.

Thus Kamalākara, in the Vivādatāṇḍava, Section on Strīdhana, after quoting Yājnavalkya's definition of Strīdhana, adds just as Vijnāneçvara: "As indicated by the use of the word Ádi, acquisitions made by inheritance, purchase, acceptance and so on are also included in this definition."[1]

Bālambhaṭṭā. Bālambhaṭṭā (Lakshmīdevī) mentions and censures expressly the reading of the Eastern Lawyers, Chaiva for Ádyam, in the text of Yājnavalkya.[2] He says, that the expletive particle *Eva* substituted for Ádya by these authors makes no sense.

Nandapaṇḍita. Nandapaṇḍita, in the Vaijayantī, expressly includes all other acquisitions of a woman in the term Strīdhana, and what is particularly interesting, he deduces this doctrine not from the text of Yājnavalkya, but from Vishṇu's definition of Strīdhana. That definition, as has been seen above, agrees almost word for word with Yājnavalkya's, but, instead of ending with Ádya, it terminates with the expletive particle *Iti*, meaning (if perforce to be translated) " thus has Strīdhana been described." Nandapaṇḍita, however, after having explained the foregoing part of the Sūtra, remarks on the meaning of *Iti* as follows: " As indicated by the word *Iti*, property received during the bridal procession, and property obtained by inheritance, purchase, partition, acceptance, finding, as maintenance, in the shape of ornaments or of gifts, etc., has also to be included. All these species of property together should be known to be Strīdhana. For Gautama says (X. 39): A man becomes owner by inheritance, purchase, partition, seizure or finding. And Devala says: Funds for her maintenance, etc." (see above). The attempt to impart such a wide meaning as this to an insignificant particle like *Iti* can hardly be accounted for except on the supposition that Nandapaṇḍita, in due deference to the author of the Mitāksharā on which he had compiled a learned commentary previous to writing the Vaijayantī, felt bound to impart exactly the same meaning to the text of Vishṇu as that assigned to the text of Yājnavalkya by Vijnāneçvara.

Viçveçvara. Another Commentator of the Mitāksharā, Viçveçvara, says in the Madanapārijāta, after quoting the text of Yājnavalkya on Strīdhana: " The word Ádya refers to property acquired by spinning (*Kartana*), purchase, partition, seizure, finding a treasure, and other modes of acquisition." The fact that Viçveçvara here speaks of spinning (*Kartana*) instead of inheritance (*Riktha*) might seem to constitute an important difference between his doctrine and the teaching of Vijnāneçvara. However, the reading *Kartana*, though found in two MSS. from Colebrooke's collection, and one MS. from Dr. Bühler's collection, can only be due to an oversight on the part of a copyist, as Viçveçvara must have derived his opinion on the subject from the Mitākshāra, which, no doubt, contained the reading (*Riktha*) inheritance. In his Commentary on the Mitāksharā, the Subodhinī, Viçveçvara has implicitly followed Vijnāneçvara.[1]

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[1] and [2] (*For the Sanskrit, see Appendix.*)

Rudradeva.

One Madras authority also assents unreservedly to the doctrine of the Mitāksharā. The Sarasvatīvilāsa, which has now been printed, after quoting the text of Yājnavalkya, repeats word for word the clause of the Mitāksharā regarding the term Ádya (§ 264). It is true that, in some passages of his work, Rudradeva uses the term Strīdhana in reference to the separate property of woman only. On the other hand, he takes a very friendly attitude towards the proprietary rights of women, which is exhibited, *e.g.*, by the fact that he treats Strīdhana, by the side of the succession to males, as obstructed property.[2]

Aparárka.

However, Vijnāneçvara's theory does not receive more striking confirmation from any other quarter than from Aparārka's Commentary of the Yājnavalkya-smriti. Aparārka had that identical reading Chaiva in the text of Yājnavalkya before him, which caused Jīmūtavāhana to put forth his restrictive definition of the term Strīdhana. Nevertheless, what Aparārka says about the meaning of this reading is this: "The particle *Cha* has the same meaning as Ádi, 'etc.' Therefore it is used in order to include other species of Strīdhana, such as are mentioned in the following texts :—The wives shall obtain an equal share (Yājn. II. 115); the mother also shall receive an equal share (Yājn. II. 123); the fourth part of their own share (Manu IX. 118); let the daughters divide the nuptial present of their mother (Vas. XVII. 46); this and whatever else may become the property of a woman is denominated woman's property, (by whom ?) by Manu and other ancient sages."[3] These remarks prove that Aparārka, though he has followed a different reading, managed to arrive at the same conclusions as Vijnāneçvara by a different process of reasoning. What is particularly important, he expressly includes in the term Strīdhana all property obtained by partition or inheritance by a woman whether in her maidenhood, during coverture, or as a widow. It should also be mentioned that Aparārka, in commenting on the text of Kātyāyana regarding the maximum amount of donations of Strīdhana, says it relates to donations made in the course of one year. This wide interpretation, which has been adopted by most other Commentators, tends to illustrate the prevailing tendency to extend the original sphere of Strīdhana property.

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[1] Thus he says (*for the Sanskrit, see Appendix*) :—"Some assert that the term Strīdhana must not be interpreted according to its derivation. That is wrong. It has to be understood in accordance with its derivation. In order to point this out, he says :—The term Strīdhana must be interpreted in accordance with its derivation."—(Mit. II. 113.)

[2] Mr. Foulkes's Preface. p. 22.

[3] (*For the Sanskrit, see Appendix.*)

Dominion over Strīdhana.

The practical importance of the question regarding the constituents and extent of Strīdhana arises first in the law regarding a woman's dominion over her Strīdhana and other property, and secondly, in the rules regarding the descent of Strīdhana. Reserving the latter subject for another Lecture, I pass to a consideration of the manner in which the rules of the Smṛitis regarding a woman's dominion over her property have been worked out in the Digests and Commentaries. It has been stated before that the Mitāksharā adheres to its definition of Strīdhana throughout the Section on that sort of property, and that, accordingly, the rules of the Mitāksharā as to the exceptional cases in which the husband is permitted to make use of his wife's Strīdhana relate to Strīdhana in its widest, not in its technical, sense. Against other relatives than her husband, a woman's power over her property may be more considerable than this, but it is subject, of course, to the ordinary limitations incumbent on her proprietary right, which may be gathered from the general rules as to the dependence of women. On this point Vijnāneçvara expresses a very strong opinion in the untranslated part of the Mitāksharā. In commenting on a text of Yājnavalkya, which corresponds exactly to the well-known text of Manu regarding the perpetual dependence of women (IX. 9), he says (Calc. ed., fol. 12, p. 1):—"Before marriage the father shall restrain a woman from wickedness, and after it the husband, failing him the sons, and in her old age, the said relatives being deficient, the distant kinsmen; on failure of any relatives, the King according to the text: If both the husband's and father's race are extinct, let the King be the protector and guardian of a woman. Therefore, women are not independent

LECTURE X.

at any time." In his commentary on the next verse, Vijnāneçvara quotes with approval a great number of texts relating to the custom of Satī, from which he says great advantage results to a widow. Under these circumstances, the silence frequently deplored of Vijnāneçvara regarding the exact extent of a woman's power over her property can hardly be interpreted in a sense favourable to woman's rights, and it is far from probable that Vijnaneçvara meant to grant to a woman that limited power over her estate even, which males have in disposing of ancestral property. It appears thus that the effect of Vijnāneçvara's wide interpretation of the term Strīdhana is neutralized by her want of independence. The corresponding portions of the commentary composed by Vijnāneçvara's contemporary, Aparārka, show that the texts, under which a woman's power over inherited property is restricted, were not unknown in the epoch of Vijnāneçvara. The latter omits to quote them, simply because they were unnecessary for the elucidation of the Yájnavalkya-smṛiti, which contains nothing corresponding to them.

Mayúkha.

In the absence of special provisions on this point in the Mitāksharā, we shall have to turn, for further elucidation of it, to the later writers of the Mitāksharā School, none of whom has understood Vijnāneçvara as an apostle of woman's rights. Beginning with the Bombay School we shall have to consult chiefly the Mayūkha, which divides Strīdhana,—*i.e.*, the entire property of a woman, in reference to the dominion over it, into two distinct classes. The Saudāyika, as defined by Kātyāyana, is under the full dominion of a woman, excepting only presents of an immovable kind received from her husband, which are subject to his control in his lifetime, and must not be alienated by her even after his death. The text of Nārada, on which this prohibition is rested, is indeed quoted as authoritative in nearly all standard works. Her power over her supersession fee and other kinds of Strīdhana (Adhivedanikādyam) is also restricted under the Mayūkha. This important rule is deduced from a text of Manu (IX. 199), which relates really to the property of the husband, though Nīlakaṇṭha, by means of a forced construction, makes it to apply to Strīdhana.[1] This, of course, does not impair the value of the important rule to be inferred from this text that, during the lifetime of her husband, a woman may not alienate any part of her Strīdhana except Saudāyika property without her husband's assent. As for the meaning of the term Adhivedanikādya, "the supersession fee and the rest," there can be no doubt that it refers to all other kinds of Strīdhana than those consisting of gifts from relatives, &c., as otherwise the term Adhyagnyādi, "property given before the nuptial fire and the rest," would have been used. Now, as all other kinds of Strīdhana, besides the Adhivedānika, are gifts from relatives, it follows that property obtained by inheritance, &c., must be meant. This passage by the way affords an additional argument in favour of the view that the term Strīdhana is not used in a technical sense in the Mayūkha. The power of a widow over property inherited from her husband is greater than this in Nīlakaṇṭha's opinion, as may be seen from the Section on a Widow's Right to Inherit. A widow is at liberty to alienate property inherited from her husband for any religious or charitable purpose, though not otherwise. A text of Kātyāyana, prohibiting the gift, sale or mortgage by a widow of property inherited from her husband, is explained away by Nīlakaṇṭha as referring merely to prohibited gifts to unworthy persons; and of a text of Bṛihaspati regarding the incapacity of a widow to hold immovable property, he proposes to get rid by means of either of the two restrictive explanations of it proposed by Devaṇṇabhaṭṭa and Mādhava.[1] Devaṇṇabhaṭṭa's interpretation, to which he seems to give the preference over Mādhava's, as he names it first, will be quoted afterwards. It is nearly equivalent to a flat denial of Bṛihaspati's statement. That the husband's power over Strīdhana is greater than that of any other relative is shown particularly by the rules regarding cases of distress which are considered to justify him, but no one else, in consuming his wife's Strīdhana even against her will. These rules in the Mayūkha are given in strict accordance with the texts of Yājnavalkya, Devala, and Kātyāyana on the subject, and an instructive summary of the law deduced from these texts in all the Schools may be found in

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[1] Borrodaile's translation of this passage (IV. 10. 8) contains several mistakes. See West and Bühler, p. 74. note (first ed.), Smṛitichandrikā, IX. 1, 13, 14; and Mandlik's Vyavahāra Mayūkha.

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[1] In this case, Borrodaile's translation (IV. 8. 3) is more exact than Mandalik's. According to the latter, Nīlakaṇṭha might be supposed to give his full assent to the doctrine of Mādhava, that a widow cannot sell or otherwise dispose of immovable property without the consent of the co-heirs.

Dr. G. D. Banerjee's Tagore Lectures (p. 229). On one minor point I am unable to agree with my learned predecessor. I consider it as certain that, in the Mayūkha just as in the Mitāksharā, these rules do not refer to Saudāyika property alone, but to all property of a woman except what has been acquired by mechanical arts or received from a stranger. If Nīlakaṇṭha had meant to exclude inherited property, he would have used the terms Saudāyika or Strīdhana proper instead of speaking of 'Strīdhana' simply.[1]

Víramitrodaya.

The Vīramitrodaya agrees on the whole very closely with the Mayūkha. Mitramiçra is especially explicit about a widow's right over her estate which he discusses in the Chapter on Obstructed Heritage. There, in attacking the narrow views of Jīmūtavāhana on this subject, he goes the length of asserting that the Bengal theory of *factum valet* is quite as applicable to women as to men. This, however, is wrangling for victory rather than for truth, and what Mitramiçra really means to establish is the following:—

1. Women may use the entire property inherited from their husbands, but they are not allowed to waste it.
2. A wasteful use of the property includes—(*a*) making presents to players, dancers, and the like unworthy persons; (*b*) wearing costly dresses and the like, and eating dainties and the like; (*c*) selling or mortgaging the property otherwise than in cases of necessity,—*i. e.*, if they are unable to subsist otherwise.
3. Gifts made for religious purposes are always valid.
4. The widow is not bound to preserve the whole property of her husband for his co-heirs. They take after his death what is left of it.

Vivádatáṇḍava.

The Vivādatāṇḍava sides with the other Bombay and Benares authorities against the narrow views of the Bengal School, especially as far as a widow's dominion over her husband's property is concerned.

Other Schools.

In some works of the Southern School, and in all works of the Mithilā and Bengal Schools, the term Strīdhana is taken in a more or less restricted sense. In these Schools, therefore, the question as to a woman's power over Strīdhana and over property inherited from males, are two entirely independent subjects. It is, however, advisable for the sake of comparison to treat them both together in this place.

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[1] The term Pāribhāshika Strīdhana, "technical Strīdhana," is actually used by Nīlakaṇṭha further on in the Section on Succession to Strīdhana.

Smṛiti-chandriká.

The Smṛitichandrikā, in the Chapter on Obstructed Inheritance (XI. 3, 8), states, that whatever property the mother inherits, is taken by her as her own separate property just as the Adhyagnika and other kinds of Strīdhana, and not as property common to herself and to her husband. It is true that this passage, as pointed out by Dr. G. D. Banerjee, is not found in the Calcutta Edition of the Smṛitichandrikā on Inheritance, but it occurs both in the MSS. used for the English Translation and in three good MSS. of the Smṛitichandrikā consulted by myself.[1] This passage is important: (1) as containing evidence in regard to Devaṇṇabhaṭṭa's notions as to the extent of Strīdhana; (2) because it proves that, according to this authority, the mother's right over inherited property stood higher than that of other females. As regards the first point, this rule has not unjustly been taken to prove that the Smṛitichandrikā does not include inherited property in its definition of Strīdhana. As for the second proposition, it goes to show that, under the Smṛitichandrikā, those South Indian decisions are objectionable in which the right of a mother over inherited property has been placed on the same footing as a widow's right over such property. The power of a widow to alienate her husband's inheritance is absolutely restricted to gifts for charitable purposes, and she is enjoined to endure patiently any opposition offered by the husband's heirs to the application of the wealth left by him. Of Saudāyika, the Smṛitichandrikā takes a far more narrow view than all other works, restricting it as it does entirely to nuptial presents received from her father's family.[2] In every other respect, the Smṛitichandrikā agrees with the Mayūkha, and may not improbably be viewed as its source in this case. Devaṇṇabhaṭṭa's restrictive interpretation of Bṛihaspatī's text regarding immovables, as relating to property inherited by a daughterless widow only, is actually quoted in the Mayūkha, as has been seen before. Devaṇṇabhaṭṭa's rules on the subject of Strīdhana other than Saudāyika must be referred to the remaining kinds of technical Strīdhana only, not to woman's property in general, as Devaṇṇabhaṭṭa seems to take the term Strīdhana in a technical sense.

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[1] (*For the Sanskrit, see Appendix.*)

[2] Smṛitichandrikā, IX. 2. 1—12.

LECTURE X.

Mádhavíya.

The Mādhavīya (p. 33), in stating the limitations to which a woman's power over property inherited from her husband is subject, introduces the distinction between movable and immovable property, and attaches more importance to the nature of the property than to the particular purpose for which it is alienated. In fact, where immovable property is concerned, alienations for any purpose are not permitted under the Mādhavīya except where the consent of the co-heirs has been obtained. In other respects, Mādhava agrees with Nīlakaṇṭha and Mitramiçra, except that his rules regarding cases of distress distinctly refer to technical Strīdhana only. Varadarāja's opinion cannot be made out, as he confines himself to quoting a number of texts without explaining them.

Sarasvatívilása.

The Sarasvatīvilāsa does not state the extent of a widow's power over her estate, and as for its ruling on Strīdhana, it is often not clear, whether Strīdhana proper or the entire property of a woman is meant. It calls Saudāyika all gifts received from affectionate kindred at any time, but it remarks also with equal generality that a woman shall have no independent power over them in case they consist of immovables (§§ 249 foll.)

Dáyabhága.

The Dāyabhāga, as has been seen, makes the absolute dominion of a woman over her Strīdhana follow from its nature as being her separate property. It does not give a full enumeration of all the single species of property falling under this head, but it is careful to exclude from Strīdhana inherited property, property acquired by mechanical arts, and gifts received from a stranger, so that the Strīdhana is in the main reduced to the Saudāyika property described in the well-known text of Kātyāyana, which Jīmūtavāhana quotes with approval as expressing his entire opinion on the subject. All other property would be "the property of a woman" (Striyā dhanam),—but not "woman's property" (Strīdhanam) in the proper sense of the term, and might be taken by the husband even where no distress exists, whereas the rules relating to seizure of his wife's goods in times of distress apply to Saudāyika only. The same power does not, however, belong to other relatives than the husband, and a widow must not be disturbed by the co-heirs in the quiet possession and enjoyment of her husband's estate. But she is not allowed to alienate it at pleasure like her Strīdhana. As regards the exceptional occasions which justify its alienation, they are generally believed to be much the same, as those stated above according to the Vīramitrodaya. As, however, Mitramiçra inveighs against the Bengal doctrine as being too narrow, the view generally taken of the Dāyabhāga doctrine is probably more favourable to women than it should be. The rights of other female heirs appear to be equal to those of a widow.[1]

Raghunandana and Crīkrishna.

Raghunandana and Çrīkrishṇa follow in the main the doctrines of the Dāyabhāga. The latter author states expressly, that Strīdhana and Saudāyika are synonymous terms, and ordains, like the Vīramitrodaya, that widows, in case they are unable to subsist otherwise, may mortgage and eventually sell their husbands' estates. Another doctrine of Çrīkrishṇa, which has often been quoted with approval and become law in Bengal, is to the effect that Strīdhana, which has once passed as such by inheritance, loses its character of separate property. It would seem to result from this rule, that the right over it of those on whom it devolves by inheritance, is by no means equal to the right of the original owner.[2] Exactly the opposite is affirmed by Jagannātha, who says distinctly that a daughter may dispose at pleasure of Strīdhana inherited from her mother. Jagannātha has also noticed several points not touched upon by his predecessors, among which the law as to a woman's right over a share obtained on partition is of particular importance. Jagannātha's remarks on this subject have been charged with inconsistency, as there is one passage in his work which denies the analogy between Strīdhana and the share obtained on partition;[3] whereas in another place, a woman's right of disposition over the share obtained on partition is placed on exactly the same footing as her right over her Strīdhana.[4] The Courts have, as a rule, adhered to the former statement as being conformable to the law regarding property obtained by inheritance, but the Judicial Committee treat the question as open. As the point is not yet concluded by authority, it seems worthwhile to remark that Jagannātha's real opinion is most probably to be found in the second of the two passages above quoted. After repeatedly read-

Jagannátha on the share obtained by partition.

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[1] Dāyabh. IV. 1; XI. 1, 56—66; XI. 2. 30, 31. A very careful analysis of the Dāyabhāga rules regarding dominion over Strīdhana may be found in Trailokyanath Mitra's Tagore Lectures, 223—227.

[2] Dāyakr. II. 2, 27; I. 2, 6; II. 3. 6. There is certainly no authority for adopting Crīkrishṇa's doctrine outside of Bengal.

[3] Dig. V. 9, dxv (Madras Ed. II. p. 628). See Mayne, § 355.

[4] Dig. pp. 251, 253. See, too, West & Bühler, p. 304.

ing this entire Section of his work in the original Sanskrit, I have arrived at the result, that Jagannātha places the share obtained by a woman on partition under her absolute control. The first passage occurs in a discussion on the right of succession to such property, and is intended to show that the rules governing succession to Strīdhana are not applicable in this case. But this does not prove anything for Jagannātha's views on the subject of a woman's dominion over a share obtained on partition, of which he speaks in several places, and always in similar terms as in the passage above quoted. Outside of Bengal, the question as to a woman's power over partition Strīdhana is of less practical importance than within that province.

The share on partition in the other Schools.

It may, however, be observed, that property obtained by partition is included in Strīdhana, not only in those works which reproduce Vijnāneçvara's definition of Strīdhana, but in Aparārka's Commentary as well, which quotes several texts relating to a woman's share on partition as referring to one kind of Strīdhana.

The Mithilá School.

The Vivādachintāmaṇi differs from the Dāyabhāga so far that it does not make the full power of a woman over her Strīdhana to follow from the very meaning of the word Strīdhana. But it treats, just like the Dāyakramasangraha, Strīdhana and Saudāyika as mutually convertible terms, so that, according to the Mithilā School, a woman has full power over all kinds of Strīdhana recognized in that School, subject only to the ordinary rules regarding a husband's right to seize it in times of distress. The divers sorts of Strīdhana are enumerated according to the texts of Manu, Kātyāyana, Vishṇu, and Devala, the text of Yājnavalkya with the dangerous Ádyam, 'etc.,' being purposely omitted, and the equally general term Lābha, 'gain,' in the text of Devala, being referred to gifts received from relatives. With regard to all kinds of Strīdhana or Saudāyika, however, the Vivādachintāmaṇi draws an important distinction between movable and immovable property, which it extends also to property inherited by a widow from her husband, or by a mother from her son. All movable property possessed by a woman may be alienated by her at will, but over immovable property, her power does not extend further than to the right to use it. This is the clear import of Vāchaspatīmiçra's remarks on the subject, as may be seen by referring to the original. Tagore's somewhat loose translation of them seems to have been sometimes misunderstood.

Immovable property in Bombay and South India.

Whatever may be the Law of Mithilā on this subject, there is no authority for holding, that a similar distinction, as far as a widow's right over her inherited property is concerned, has to be observed in Bombay and South India. No doubt the text of Nārada regarding a woman's want of power over immovable gifts from her husband prevails in all provinces. But no other South Indian writer besides Mādhava extends this distinction to inherited property. In the analogous passage of the Sarasvatīvilāsa, none but Saudāyika property is referred to. In the Mayūkha, as has been seen, the opinion of Mādhava is quoted, but is apparently not approved of. It may be confidently asserted, therefore, that there is no more reason for observing this distinction in regard to property inherited from males in Bombay and South India, where this point seems to be still open to question, than in Bengal and Benares, where the non-existence of such a distinction as this has long been settled by authority.

Result.

It appears from the foregoing discussion, that the divers Schools do not differ so much in regard to the subject of dominion over Strīdhana and other female property as might have been expected, considering their radical difference of opinion in regard to the meaning of the term Strīdhana. Jīmūtavāhana appears to take a especially narrow view of a widow's power over property inherited from her husband, but this is altogether natural, considering the extension of female succession to undivided property in the Bengal School. In the Mitākshara School, the principal successors of Vijnāneçvara have, by introducing the distinction between Saudāyika and other property of a woman, essentially removed, as far as dominion over Strīdhana goes, the consequences of his identification of Strīdhana with female property in general.

LECTURE XI.

SUCCESSION TO FEMALE PROPERTY.

Object of the early rules on the descent of Strídhana — Simultaneous succession of males and females — Property of a maiden — Remote heirs — Growth of these rules — The Commentators — Mitákshará character of its system — Inherited property — Dáyabhága system — The other Schools — The principal question — Meaning of Dáyáda — Property must not be diverted from the family — Unpublished Digests — Remote heirs.

Object of the early rules on the descent of Strídhana.

It has been shown that, in the Smṛitis, the term Strīdhana is used with reference to the technical Strīdhana only, and it is for this technical Strīdhana that the ancient lawgivers of India have devised that special line of descent which has become the subject of so much comment and diversity of opinion in the Digests. The object of this institution seems clear. From recognizing the independent property of women in ornaments, household furniture, and other articles usually in their possession, there was but one step to declaring these articles as the privileged property of females, which was not to be estranged from its natural owners even in consequence of their death, and was, therefore, to descend to other female family members.

Páraskara.

A number of other writers agree in calling the sons and daughters together to the succession. Pāraskara mentions the unmarried daughter as heir in the first instance, but he adds that, in a competition between married daughters and sons, the sons shall take an equal share.

Manu.

Manu ordains (IX. 192) that, on the death of the mother, the uterine brothers and the uterine sisters shall equally divide the maternal property; and in another place (IX. 195) he says, that such wealth (meaning the Strīdhana of the mother) shall belong, even if she die in her husband's lifetime, to her issue. This is probably the correct interpretation of the second text of Manu; but it must be owned that, together with the analogous text of Yājnavalkya on the right of the Baṇdhus, it might be interpreted in a more restricted

Devala.

Kátyáyana.

Property of a maiden.

Remote heirs.

sense, so as to refer to the Anvādheyaka and the loving husband's donation only. In failure of issue, the husband shall inherit, in case he was married according to one of the five first rites ending with the Gāndharva rite, and the parents shall inherit in case the marriage had been contracted according to one of the three blamed rites (IX. 196-197). Virtually the same rule is contained in a text of Yama on succession in the case of a childless woman. Under this rule the husband is placed in a somewhat more favourable position than according to the rules of Yājnavalkya and Vishṇu. But the question as to the legitimacy or illegitimacy of the Gāndharva rite,—*i.e.*, of love-matches without parental consent, is one about which a general uncertainty prevails in the Smṛitis. There is a further text of Manu (IX. 193) to the effect, that daughter's daughters shall receive something out of their grandmother's property; and another text, under which the property of woman of lower caste descends to a step-daughter of the Brahman caste (IX. 198). Devala ordains that, on the death of a woman, her Strīdhana shall be taken in equal shares by her sons and daughters; should she have left no issue, it shall be taken by her husband, mother, brother or father. Çankhalikhita declares, that all the uterine brothers and the maiden daughters shall take the (maternal) property in equal shares.[1] The following rules are laid down by Kātyāyana, who, as has been seen in the last Lecture, has treated the Law of Strīdhana with far more detail than any other Smṛiti-writer. But on failure of daughters, the (mother's) estate belongs to the sons. What she had received from her relations (Baṇdhus) shall go back to her relations; on failure of such, it shall go to the parents. Sisters having husbands should share with the relations (Bandhavas). Thus has the law regarding Strīdhana and Succession to Strīdhana been propounded. The heirs to a maiden's property (*Riktha*) are noticed by Baudhāyana, *alias* Nārada, who says that it shall be taken by her uterine brothers; on failure of them, by the mother; and on failure of her, by the father. This text is not traceable to either the Dharmasūtra of Baudhāyana or the Nāradasmṛiti. The law regarding the more remote relations, who

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[1] Thus according to the reading of the Dāyabhāga (Cal. ed., p. 127) and of Bālambhaṭṭa. Haradatta, in his Commentary on Gautama, reads स्त्री कुमार्यश्च, the wife and the daughters. According to this reading, the whole rule must be referred to property left by a male.

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are to succeed on failure of a husband, etc., is stated less clearly than desirable in the following text of Brihaspati or Vriddha-Cātātapa. The mother's sister, the maternal uncle's wife, the paternal uncle's wife, the father's sister, the mother-in-law and the wife of an elder brother are pronounced similar to mothers. If they leave no legitimate son of the body,[1] nor daughter's son, nor their son, the sister's son and the rest shall take their property.

Growth of these rules.

On a careful examination of the great variety of doctrines embodied in these texts, the result will be readily arrived at, that they contain the laws of different countries, and especially of different times. The most important point of difference between the earlier and the later texts consists in the introduction in the latter of the sons as heirs. So considerable in extent and value had the Strīdhana become in course of time, that its exclusive devolution in the female line was no longer compatible with Hindu notions of the perpetual dependence and inferiority of the sex. The recognition of the husband and father as ultimate heirs, on failure of daughters, may perhaps be viewed as the connecting link between the exclusive female succession of the older period and the simultaneous succession of sons and daughters in the modern period of the Hindu Law. The importance attributed to the particular marriage rite, in which the deceased proprietress of Strīdhana had been married by her husband, savours of priestly influence. It may, however, have had a foundation in actual usage so far that the right of legitimate husbands stood higher than of those whose legitimacy was considered doubtful. Besides, the Asura wedding being the principal among the lower marriage forms, the bride-price paid at an Asura wedding and delivered to the woman could naturally revert to the woman's family after her death, as being the group of persons originally entitled to its receipt. The preference shown to unmarried daughters over married ones is due to the fact that those daughters who had been provided for in marriage, naturally did not seem to stand in need of Strīdhana so much as their unmarried sisters. Baudhāyana's rule regarding the devolution of a maiden's property corresponds very nearly to Gautama's observations on the descent of her Çulka. An unmarried damsel in early times could hardly have possessed any other property but ornaments and other presents received from relations, and those gifts which had been presented by the bridegroom to her parents as her bride-price, and had afterwards been delivered to her as a dowry. Kātyāyana's rule, that property given by the Bandhus passes to the Bandhus, may be explained as a result of the principle that Strīdhana being composed of gifts should return to the original donars. The Indian Commentators, instead of removing the contradictions between the conflicting Smṛiti texts by the application of the historical method, have resorted to their usual practice of explaining them away through certain bold freaks of interpretation. The adoption of this practice in the present instance has engendered the more diversity of opinion, because part of the Smṛiti texts bearing on this subject are really ambiguous. Vijnāneçvara has founded his system in the first instance on the two texts of Yājnavalkya (II. 117, 145) in which the daughters are named as heirs to female property. He refers both texts alike to the entire property of a woman, but he thinks that in the second of these texts, in order to avoid tautology, the term daughters should be referred to the daughter's daughters. In order to determine the order of precedence among several daughters, he avails himself of Gautama's rule regarding the relative rights of married and unmarried, poor and rich, daughters. From another text of Gautama (XXVIII. 25, 26) he infers that the Çulka, contrary to this rule, shall go to the uterine brothers, after the death of the mother. A third text of Gautama (XXVIII. 15) serves the purpose of establishing the right of representation, where the Strīdhana passes to the daughters of daughters. That text relates in reality to the property of a man who has left children begotten on different wives. From the text of Manu on the right of grand-daughters (IX. 193), he deduces the rule, that in cases of competition between daughters and daughters' daughters, the latter shall receive a trifle. The claim to the inheritance of the daughter's sons is inferred from a text of Nārada (XIII. 2) in which the issue (anvaya) of daughters is called to the succession. Vijnāneçvara refers the term to male issue

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[1] In all the translations of this text. the clause "the son (of a rival wife)" is inserted before the clause "nor daughter's son." This is in accordance with the observations of the Indian Commentators on this text. But the term putra (*suta*) being used without any qualifying epithet, cannot denote the stepson. It has to be combined with the preceding term *aurasa*, and both words together denote "the legitimate son of the body."

The Commentators.

Mitákshará.

alone, though there is not a shadow of reason for the restrictive interpretation. The right of the sons is established by means of the rule of Manu (IX. 192) on the common right of the sons and daughters to the maternal property. According to Vijnāneçvara, however, the sense of Manu's rule is this, that the daughter shall take first and the sons afterwards. He takes great pains to substantiate this interpretation, the arbitrary character of which is obvious enough. On failure of issue of the whole blood, the daughter of a rival wife of a higher caste, or the issue of that daughter, shall inherit. This rule is deduced from a text of Manu, which refers to a wife of the Brahman caste only (IX. 198). On failure of sons, the grandsons shall inherit. This law, curiously enough, is deduced from the obligation of sons and grandsons to pay the debts of their ancestors. The artificial character of this system, which, as has been seen, rests on a very slender basis of texts jumbled together in a thoroughly arbitrary manner, is exactly evidence in favour of the assumption that Vijnāneçvarā in forming this system had a special object in view. He would hardly have resorted to such a fearful method of interpretation as this without a special reason for it. It may be supposed *a priori* therefore to be connected somehow wich that important feature of Vijnāneçvara's Theory of Succession, the inclusion of inherited property in the constituents of *Strīdhana*. The rule which results from this doctrine, *viz.*, that property inherited by a woman descends to her daughters, etc., just like Strīdhana proper, is that feature of Vijnāneçvara's theory of Strīdhana which has rendered it so objectionable in the eyes of the English Jurists and has caused it to be overruled by the highest Judicial Authority.

The character of this system.

Inherited property.

That inherited property of a woman, no matter from whom it may have been inherited, ranks as Strīdhana under the Mitāksharā, has been shown in the last Lecture. Clearly then, there bring no provision to the contrary, such property is governed by the same rule of descent as all other Strīdhana. Thus far the Mitāksharā; but what do the other writers say about this matter? It may be pointed out first, that the second old Commentary on the Yājnavalkya-smriti is entirely in accordance with the Mitāksharā. It has been proved in the last Lecture that Aparārka and Vijnāneçvara agree perfectly as to the meaning of the term Strīdhana, and that the dissertation of the former author on this subject contains a particularly important confirmation of Vijnāneçvara's doctrines, because he arrives at the same conclusions as he by a different and more elaborate rain of argument. The same remark holds good with regard to his Teaching on Succession to Strīdhana. Most of his observations on this subject occur in the gloss on Yājnavalkya (II. 118), which verse treats of the devolution of the maternal property,—*i.e.*, of the mother's entire wealth without distinction; and this fact by itself is highly characteristic, because it shows that Aparārka made no difference, as regards the order of succession, between Strīdhana proper and the remaining property of a woman.

Dáyabhága system.

The Dāyabhāga, which takes the term Strīdhana in its original restricted sense, does not include property inherited from the husband in that denomination. Such property, under the Dāyabhāga (XI. 1, 56—59), descends to the heirs of obstructed property, and not to the heirs of Strīdhana on her death. This rule is deduced from a text of Kātyāyana on the widow's succession, under which the property inherited by her decends from her to the Dāyādus. The ambiguous term Dāyāda may denote "the heirs," but Jīmūtavāhana is certainly wrong in referring it to the well-known series of heirs to obstructed property as established by Yājnavalkya. Even assuming that Kātyāyana was acquainted with Yājnavalkya's text on Obstructed Inheritance, which is doubtful, he cannot be supposed to refer to the heirs as stated by Yājnavalkya, as his own list of heirs differs from that given by Yājnavalkya. Dāyāda evidently denotes the coparceners of the deceased husband in this place. Property inherited by another female follows the same rule of descent under the Dāyabhāga (XI. 1, 68) as the inherited property of a widow. Strīdhana proper is divided into several classes by Jīmūtavāhana. Yautuka—*i.e.*, property given at the nuptials—descends first to the unbetrothed daughters; on failure of such, to those who are betrothed; and on failure of such, to those who are married. This rule is founded on a very peculiar interpretation of a text of Gautama (XXVIII. 24), which is quite differently interpreted in the Mitāksharā, as has been shown before, and on a false etymology of the term Yautuka in a text of Manu (IX. 131), as being derived from the root yu, "to join," and denoting, therefore, a gift presented at the nuptials. So strongly has Jīmūtavāhana's system been influenced by the introduction of this new category of Strīdhana, that he opposes to it all other kinds of Strīdhana by the name of Ayautuka Strīdhana other than Yautuka. Both Yautuka and Ayautuka is again divided into several species by Jīmūtavāhana, and for each of these classes of Strīdhana he proposes a different order of succession, though the heirs do not differ all of them in each case.

The other Schools.

On a number of important points most writers of the other Schools harmonize entirely with the Bengal Authorities. In particular, they divide the general category of Strīdhana into a varying number of species, among which the property called Yautuka occupies a prominent position. It is generally considered to denote nuptial property, and this interpretation is apparently very old and has been borrowed by Jīmūtavāhana from his predecessors.

Inherited property.

On the principal question, *viz.*, whether or no inherited property descends in the same manner as Strīdhana proper, most of the later writers seem to differ from Vijnāneçvara and Aparārka, but neither do they agree with the doctrines held in the Bengal School. Strange to say, the second Bombay Authority after the Mitāksharā, the Mayūkha, agrees with the Dāyabhāga more closely in substance, though not in form, than any of the other works. It ordains that all Aparibhāshika Strīdhana, *i.e.*,—that property of a woman which is not technical Strīdhana,—shall descend to the same heirs as the property of a male, and not to those heirs who take the Strīdhana proper. As instances of Aparibhāshika Strīdhana, the Mayūkha mentions property acquired by partition (Vibhāga) or by spinning.[1] The Vivādachintāmani, Mādhavīya and Smritichandrikā may be supposed to be equally adverse to the Succession of Inherited Property in the female line, as they do not class such property as Strīdhana, but they do not state distinctly on whom it is to devolve. They quote, however, the text of Kātyāyana, under which property inherited by a sonless widow descends to the heirs of the husband, and not to her own heirs.[2] Now the term the heirs (Dāyādus) of the husband has been shown to relate to his coparceners, and this is also the explanation which the Vīramitrodaya gives of it.

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[1] Mayūkha IV. 10, 26 (97 Mandlik). Borrodaile's reading of this important passage is hardly intelligible.

[2] Vivādachintāmani, 261 (Tagore); Mādhavīya, 32; Smṛitichandrikā XI. 1, 32.

Meaning of Dáyáda.

It is far from improbable that this doctrine expresses the opinion of some of the Southern authors as well. As the meaning of Dāyāda in the text of Kātyāyana is not explained by them, the simplest and best course is to give its natural meaning to it. Moreover, though the Smṛitichandrikā does not comment on the term Dāyāda itself, there is sufficient circumstantial evidence to show that it means to refer it to the coparceners. For the Smṛitichandrikā (XI. 1, 33) considers the rule of Kātyāyana to apply to the estate of an undivided coparcener, and the heirs of such a man, as is well known, are the other undivided coparceners. It is true that the text of Kātyāyana loses through this interpretation its applicability to property inherited from a separate male. But, on the other hand, the text of Kātyāyana is the chief stay of the Bengal theory, which identifies the heirs to property left by a female with the heirs to obstructed property of a male. As the Smṛitichandrikā takes a different view of the import of that text, it can hardly be supposed to acquiesce in the conclusions deduced from it by the Bengal writers. The Sarasvatīvilāsa, although embracing the interpretation of the Smṛitichandrikā (§§ 521, 522), has a curious disquisition on the text of Kātyāyana (§§ 532—534), in which it is applied to divided estates as well, and the following rule deduced from it and from another text. If the widow dies leaving a daughter, her inherited property goes to that daughter, to the daughter's son and to the other heirs (of obstructed property). If she leaves no daughter and the rest, the inheritance does not belong to the parents and the rest (*i. e.*, to those who take obstructed property on failure of the daughter's son), but to the heirs, *i.e.*, to the former coparceners of her husband. Why the rule regarding Obstructed Inheritance is to be followed as far as the daughter only, does not become clear; it may be because the daughter may be considered to possess a birthright interest in all the property of her father.

Property must not be diverted from the family.

Judging these theories on their intrinsic merit, it seems clear that one of the chief objects of the Indian Law of Inheritance, *viz.*, to prevent the family property from going out of the family, is obtained by them more effectually than even by the Bengal system. In the case of the widow, which is the most common and important case of all, the Vīramitrodaya names the former coparceners of the husband as heirs to a widow, whereas the Bengal writers make her property pass to her daughter. The Sarasvatīvilāsa so far agrees with the Bengal writers, but instead of introducing the daughter's son after the daughter, it causes the inheritance to pass, on failure of her, at once to the former coparceners, excluding entirely the mother and other female heirs. Under the Mitāksharā, the family property when inherited by a widow is not quite so well protected against being estranged from the family as it is in the other Digests. Nevertheless, the true object of the Mitāksharā system of Succession to Strīdhana, which has been analysed before, is apparently no other than this, to counterbalance the effect of the inclusion of inherited property in the definition of Strīdhana, by devising an altogether new line of descent of Strīdhana. This has been effectively accomplished by Vijnāneçvara. For, as has been pointed out by Messrs. West & Bühler,[1] the Mitāksharā series of heirs to the property of a sonless widow is not less propitious to the interests of the family than the Bengal system except in a single case.

Unpublished Digests.

It may be observed finally, that the unpublished Digests of the Mitākshara School agree more or less with the Mitāksharā and Aparārka, the Mayūkha being the only work outside of Bengal in which the Bengal system regarding the devolution of inherited property of a female is followed. Thus the Madanapārijāta discusses first the Rules of Succession to Strīdhana, which designation, as pointed out in the last Lecture, it applies to the entire property of a woman. The series of heirs to a woman's property (other than Çulka) is stated as follows in the Madanapārijāta.[2] The mother's wealth shall be taken by the daughters; on failure of them, it shall belong to the daughter's daughters and daughter's sons; on failure of them, it shall belong to their descendants,—*i. e.*, to the race of a daughter's son. The race of the daughter's son is alone referred to, and not the race of the daughter's daughter. On failure of descendants of the daughter's son, the son, the grandson and the rest shall be heirs in succession.[3] The resemblance of these rules to the Mitāksharā Law is sufficiently apparent. Vaijayantī (XVII. 21) establishes five lines of descent for as many different sorts of Strīdhana. The last of these is property inherited from the father or husband, and the rules of descent for such property, though not identical with the Mitāksharā rule regarding descent of Strīdhanā in general, differs equally from the series of heirs to obstructed property. Kamalākara, in the Vivādatāṇḍava, gives likewise various lines of descent for various kinds of Strīdhana. He does not refer to inherited property expressly, but seems to include it in the denomination of "Strīdhana other than Yautuka," for which he prescribes that line of descent which in the Mitāksharā is ordained for Strīdhana generally.[1]

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[1] II. 122, 1. edit.

[2] (*For the Sanskrit, see Appendix.*)

[3] (*For the Sanskrit, see Appendix.*) "However, what the mother has taken at the division of her father's patrimony, or inherited from her husband, shall be divided equally by the sons and daughters." Further on, Nandapandita says, that a full share shall be given to maiden daughters only, married daughters taking a quarter of a share. Where there are sons, they shall also take a full share, and on failure of daughters, they shall take the whole. On failure of sons, the daughter's

Remote heirs.

It is only in order to establish the order of precedence among the remote heirs to Strīdhana, who come after the husband and parents, that Kamalākara refers to the analogy of the heirs to obstructed property. The force of this analogy has been recognized by Messrs. West & Bühler, Dr. G. D. Banerjee, and other authorities, and there is nothing in the Mitāksharā itself to contradict it. It should, however, be observed that, although Madras and Benares Law is governed by the Mitāksharā, female Sapiṇḍas cannot now succeed under the law of these two provinces to female property any more than to the obstructed estate of a male. This is no doubt a deviation from the Mitāksharā system, but the exclusion of females having been carried out in the case of remote heirs to the property of a male, it would hardly be logical to admit them to succession in the case of female property. The exclusion of female Sapiṇḍas from succession to a woman's property is, moreover, expressly pronounced in the Vīramitrodaya (244). The Bengal system of remote heirs to Strīdhana is based entirely on the text of Brihaspati, which has been quoted before.[2] In

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son or grandson shall inherit it. After him come the sister's sons and the rest or (the brother-in-law and the rest), according as the property is derived from the father's or from the husband's family.

[1] Kamalākara has, however, misquoted Vijnāneçvara, as he makes him say that the sons come directly after the married daughters in the order of heirs to a mother's property. (*For the Sanskrit, see Appendix.*) In the Section on the Widow's Right of Succession he quotes Kātyāyana's text on the right of the Dāyādus to take after her without a comment. It has, however, been shown before (p. 265) that includes inherited property in the definition of Strīdhana.

[2] The translation of this text has been erroneously given in Colebrooke's Dāyabhāga IV. 3, 31. See Tyer's Smṛitch., p. 35, note; Banerjee, 433.

LECTURE XI. closing Modern Law of Succession to Female Property, I may observe that I have dwelt principally on those points on which I am unable to agree with previous writers on Strīdhana, a repeated discussion of the whole subject being hardly called for after the copious treatment of it in Dr. G. D. Banerjee's Tagore Lectures on Strīdhana and other recent works.

The correct translation may, however, be found in Colebrooke's Digest V. 9, dxiii.

LECTURE XII.

EXCLUSION FROM INHERITANCE.

The old texts — The modern works — Meaning of Nirindriya — Madness, etc., need not be congenital, nor incurable — Incurable disease — Leprosy — Long and chronic diseases — Penances — Undutiful sons — The prodigal — Members of a religious order — Sarasvatívilása — Women — Removal of disability — Subsequently arising disqualifications — Subsequent inchastity of a widow — The disability personal only — Claim to maintenance — Tendency of decisions — The Sachsenspiegel on exclusion from inheritance.

The old texts.

THE native Legislators of India have been frequently condemned for the excessively wide extension given by them to the grounds of exclusion from inheritance. This, however, is no original feature of the Indian Law of Succession. According to the Gautama-smṛiti (XXVIII. 43), the earliest Indian law-book which has come down to the present time, no other sort of person is disabled from inheriting than the idiot and the eunuch. It is true that other ancient enumerations of persons unfit to inherit are more comprehensive than this one. Thus Baudhāyana (II. 2, 3, 37—40) excludes from inheriting all "those who are incapable of transacting legal business," and mentions as instances of such persons—the blind; idiots; those immersed in vice (or afflicted by calamities); the incurably diseased and others similary circumstanced; those who neglect their duties and occupations; and the outcast and his offspring. But on reviewing all the Smṛiti texts on this head,[1] it will be found that the following persons only are mentioned as incapable of inheriting in the majority of these texts,—*viz.:* outcasts or persons expelled from society (10 Smṛitis); eunuchs or impotent men (9 Smṛitis); idiots and madmen (6 Smṛitis each). All the other antegories are referred to in some schools only. They are blind and deaf persons, especially those who are so from the date of birth; the dumb, the lame and, generally speaking, those deficient in any one organ of sense or action; lepers; those afflicted with any other agonizing, chronic or incurable disease; illegitimate sons; the offspring of an outcast; those who have entered a religious order, as well as apostates from religious mendicity; a spendthrift; an enemy to his father; one who has sinned against either of his parents; an elder brother who cheats his junior brothers at the division of the patrimony; one who has committed a minor offence (upapātaka); and a vicious man or one devoid of virtues, or who neglects his duty.

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[1] Baudhāyana and Gautama, *ibid;* Ápastamba II. 6, 13. 3; II. 6, 14. 1. 15; Vasishṭha XVII. 52—54; Vishṇu XV. 32; Manu IX. 201, 213, 214; Yājnavalkya II. 140; Nārada XIII. 21-22; Devala, Bṛihaspati, Cankhalikhita or Cankha, Kātyāyana.

The modern works.

This is a formidable list, but neither is such a comprehensive enumeration as this given in any of the modern works. Thus the Mitāksharā refers to those categories only which are mentioned in the texts of Yājnavalkya, Vasishṭha, Nārada and Manu: one impotent; an outcast and his offspring; the lame; idiots; the blind; the incurably diseased; members of a religious order; an enemy to his father; a minor offender; one deaf or dumb; and one deficient in an organ of sense or action. Other Digests of the Mitāksharā School, such as, *e. g.*, the Smṛitichandrikā, Mayūkha and Vivādachintāmani, quote a larger number of texts than the Mitāksharā; but considering the general policy of the Mitāksharā Law, it may be justly called into doubt whether their teaching should be allowed to overrule the Mitāksharā doctrine in this case. It has been seen in a former Lecture,[1] that the early rules regarding the exclusion of an elder brother, who cheats his junior brothers at the division of the property, and of a lazy member of the coparcenary, who refuses to work, were explained away by all Commentators. It should also be considered that the general tendency of the Mitāksharā to uphold the rights of the family in the strictest form precludes the idea of any one family member being debarred from his share for any other than the most sufficient reasons.

Meaning of Nirindriya.

Another difference of opinion, besides the one resting on the varying number of texts quoted in each Digest, has been called forth by the philological difficulties besetting the interpretation of some of the terms used in the old texts on exclusion from inheritance. No other among those terms is so ambiguous as the phrase 'those who are Nirindriya anyhow' in a text of Manu (IX. 201), which is quoted in all Digests. Occurring, as it does, at the close of a list of excluded persons, the word 'Nirindriya' may be supposed to be a general term denoting bodily infirmities or defects of every other kind than those specifically mentioned in the previous list. Thus, in another text of Manu (IX. 18)[1] the same word 'Nirindriya' is used with reference to women, and means 'destitute of strength.'[2] Most Commentators, however, agree in explaining 'Nirindriya' etymologically as meaning one deprived of *Indriya*, and this interpretation may be justified by the analogy of the terms '*Vikala*' and '*Vikalendriya*,'[3] which are no doubt synonymous with Nirindriya. Now the term *Indriya*, 'sense,' in the language of Manu and other Smriti-writers, is commonly used to denote either the five senses, or those ten organs, of sense and of action,[4] which were distinguished by the naturalists of India. But Indriya may denote *semen virile* as well, and a further difference of interpretation is caused by the fact that the absence of Indriya may either be a congenital defect, or caused by a malady. Thus have arisen the various conflicting interpretations, which are to be found in the remarks of the Digests and Commentaries and of the Çāstrīs on the text under notice. The Mitāksharā explains Nirindriya as denoting one who has lost an Indriya, *i. e.*, an organ of sense or action, by disease or other cause, and this interpretation ought to be viewed as settling the law in the schools governed by the Mitāksharā. Jagannātha, on the other hand, the only writer of the Bengal School who has explained this term, says it denotes lame persons and the like who are disqualified for acts ordained by the law. He further says, that the total, and not the partial, loss of an organ is meant, or at least complete inability to use it. The first part of this explanation seems to have been derived from the Vivādachintāmaṇi (243 Tagore).[1] It is important to notice that in all schools the Nirindriya is disabled from inheriting, no matter whether his defect is congenital or not. Most of the defects included in this term, such as, *e. g.*, lameness, dumbness, and congenital blindness and deafness, are indeed provided for by special texts, but other defects, *e. g.*, loss of the ears or loss of the nose, are not.

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[1] P. 260.

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[1] See, too, Burnell. Varadarāja 41, note.

[2] See the Petersburg Dictionary. This passage of Manu is a quotation from the Veda, and in the writings of the Vedic period Nirindriya means no doubt 'feeble. destitute of strength,' or 'destitute of manly vigour, impotent.' And in reference to a cow, it means 'barren.' Medhātithi, on M. IX. 18, says it means that women are deficient in strength, constancy, insight, power, &c. *(For the Sanskrit, see Appendix.)* Jones, following Kullūka, translates Nirindriya by 'having no evidence of law.' Rāghavānanda agrees with Kullūka. But this interpretation is quite arbitrary.

[3] Vishṇu XV. 32; Manu VIII. 66. Jones renders *vikalendriya* by 'one who has lost the organs of sense,' but it really denotes one who has not the use of some one organ. Medhātithi refers it to 'blind and deaf persons and the like.' Vijnāneçvara, in commenting on the same term occurring in an analogous text of Yājnavalkya (II. 70), says it means those deficient in the sense of hearing, etc.

[4] The five organs of action are: the voice or tongue, hands, feet, anus, and pudenda. See Manu II, 90; Vishṇu XCVI. 95; Yājnavalkya III. 92.

Madness, etc., need not be congenital.

It has, indeed, been frequently held that most of the infirmities mentioned as grounds of exclusion cannot have that effect unless they are congenital. The old texts, however, though referring to blindness and deafness as having to be congenital, do not mention the same restriction in connection with any of the other grounds of exclusion.[2] The Digest-writers have admitted this view, and it might even be doubted whether the Mitāksharā requires blindness and deafness to be congenital in order to operate as a bar to inheritance.[3] Jagannātha is the only writer who extends this condition to other disabilities, though his remarks on this subject are far from consistent.[4] Granting, however, for argument's sake, that those passages of his Digest[5] in which he speaks of madness as being a ground of exclusion in every case do not contain his real opinion, Jagannātha's view of this matter is of very slight importance even in settling the doctrine of the Bengal School. The

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[1] Mādhava (39), the Mayūkha (IV. 11. 3), and Smṛitichandrikā (V. 4) follow Vijnāneçvara; only the two last-named works seem to restrict the term *Indriya* to the five senses, the power of smell or the nose being given as an instance. The Sarasvatīvilāsa (§ 150) dissents from this interpretation and seems to refer Nirindriya to congenital defects only (§ 149). Kamalākara says it denotes those who have lost their heads or feet through disease. (*For the Sanskrit, see Appendix.*) The Viramitrodaya refers it to one whose potency has been destroyed by illness, etc., in contradistinction to a naturally impotent man. (G. Sarkār, 253, has rendered this passage differently, but wrongly,) The Vivādachintāmaṇi refers it to those who are deprived of a head, foot or other (limb), and are therefore disqualified from performing religious acts. Nārāyaṇa distinctly includes both the organs of sense and of action in the term Nirindriya; Medhātithi, Kullūka, Rāghavānanda and Nandanāchārya seem to think that the organs of action alone are meant.

[2] See Strange, I, 153; Mayne, §§ 510—512, and the cases quoted, *ibid.*

[3] See, too, Smṛitichandrikā V. 9.

[4] This has been observed by Sir Th. Strange and Mr. Mayne.

[5] Dig. V. 5, cccxxvi, cccxxix—cccxxxi.

Dāyabhāga (V. 7, 10, 11), the principal authority of that school, quotes three texts, in which the exclusion of the madman is ordained without any restriction; and in commenting on the text of Manu, Jīmūtavāhana says distinctly, that no other infirmity than blindness and deafness need have existed from birth. The same opinion is expressed in Raghunandana's Dāyatattva and in the Dāyakramasangraha. Nor is it probable that Jagannātha would have discarded the doctrine of his predecessors, if his opinion had not been influenced by a false reading in the text of Nārada. That text, as quoted by Jagannātha,[1] contains the clause जन्मोन्मत्तान्धपङ्गव: "afflicted from the date of birth with insanity, blindness or lameness," whereas the ordinary reading is जडोन्मत्तकपङ्गव: "idiots, madmen, blind, and lame persons." The latter reading is found in all the other Digests and in all the manuscripts of the Nārada-smriti which I have been able to consult.[2] It is difficult to say from what source the erroneous reading of Jagannātha may have been derived, and whatever may be the equities of the case, it is certain that Jagannātha's opinion on this point ought not to have been allowed the least weight by the Courts. As regards madness in particular, there are several passages in the Commentaries in which it is referred to as an illness, and not as a natural defect existing from birth. Thus the Mitākshara explains the term *unmatta*, 'a madman,' as denoting 'one affected by any of the various sorts of insanity produced by disorders of the aërial humours, of bile, or of phlegm, or by a combined derangement of those three humours, or by possession by a demon.'[3] Aparārka says *unmatta* means one afflicted with the illness called *unmāda*—*i. e.*, with mania. Of the Commentators of Manu, no other than Nārāyaṇa has thought it necessary to explain the term a madman.[3] He says, the deaf man likewise (as well as the blind man) must have been from birth; the madman and the rest must be incurable.[4]

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[1] Dig. V. 5, cccxx.

[2] The manuscripts of Nārada (XIII. 22) read जडोन्मत्तकपङ्गव: idiots, madmen and lame persons; but this difference of reading does not affect the point under notice.

[3] This translation differs slightly from Colebrooke's Mitāksh. II. 10. 2. See, too, Burnell's Varadarāja 13-14.

[4] (*For the Sanskrit, see Appendix.*) In Wynch's Translation of the Dāyakramasangraha (Stokes's H. L. B., 500) the term chronic, used with reference to disease, is explained to mean 'from the period of birth.' But

Nor incurable.

The view enounced by Nārāyaṇa that madness and the like disorders must be incurable, in order to affect the right to inherit, is shared by few writers of note. The Vivādachintāmaṇi[1] states that blindness, deafness, madness, idiotcy, dumbness, and the loss of the hands, feet or of another organ, must be proved to be incurable. Viçveçvara in the Madanapārijāta[2] and Jagannātha in his Digest[3] lay down the same propositions in regard to madness and blindness respectively. The other writers, however, do not mention any such restriction. On the contrary, a work of such wide repute as the Smṛitichandrikā (V. 2) declares the qualification of the term 'illness' alone by the epithet 'incurable' 'to show that other infirmities, such as impotency or the loss of an organ or limb, will produce a disqualification to inherit, though they may be curable or have arisen at a period subsequent to birth. This statement is quoted with approval in the Sarasvatīvilāsa (§ 156).

Incurable disease.

The term 'an incurable disease' being rather general, the Commentators have taken care to explain it; leprosy (*kushṭha*) and pulmonary consumption (*kshaya, yakshman*) being given as instances of incurable diseases causing exclusion from inheritance. Nandapaṇḍita[4] refers besides to the illness called *bhagandara*, which consists of a fistula in the pudendum muliebre, the anus, etc. It may be inferred from the choice of these examples, that those diseases only were looked upon as causes of disqualification which produce a visible change in the system.

Leprosy.

Leprosy is mentioned as an independent ground of exclusion. The superstitious dread of lepers, which has formerly caused them to be excluded from inheritance in European countries as well, was enhanced in India by the belief in transmigration, which caused this and other loathsome maladies to be viewed as the consequences of evil actions committed in a previous existence. In some parts of India it was an established practice till quite recently

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the first Calc. ed. (p. 24) has जन्मादि (the second edition has जन्मादि ।). The word ādi in this clause must mean 'etc.,' just as in the following clause कुष्ठादि, and the whole clause therefore means 'diseases dating from birth *and other* lasting diseases.'

[1] Calc. ed., 134. Tagore's rendering of this passage is extremely loose.

[2] 3. V. 5, cccxxix. (*For the Sanskrit, see Appendix.*)

[3] V. 5. cccxxix.

[4] Vaijayantī XV. 32.

to bury lepers alive.[1] The vague epithets, long or chronic and 'agonizing,' which are used to qualify the term 'disease' in the text of Nārada (XIII. 22), are explained in the same way as the term 'incurable' in most Digests. Raghunandana and other writers of the Bengal School appear to have looked on such comparatively light distempers even as dysentery, gonorrhœa, black teeth and the like, as causing exclusion, on account of their being the consequences of a crime committed in a former existence. They directed, however, the performance of certain penances, by which the taint of sin believed to attach to such persons might be removed. This principle was applied to all diseases, including leprosy, by some, while others were of opinion that the non-performance of a penance by a sick man could not bar his right to the inheritance.[2] Outside of Bengal, this curious extension of the system of expiation to evil acts committed in a previous existence has never obtained, and I have been informed by eminent Benares Paṇdits that in their opinion penances are only applicable to actions committed in this life.

Long and chronic diseases.

In all the schools, heavy offences entail expulsion from caste, and one expelled from caste is disqualified from inheriting, but his right would revive after the performance of an expiation, which led to his readmission into caste. This is expressly stated in the Vīramitrodaya (253). It may be presumed *a fortiori* that the numerous minor vaguely defined offences, which are mentioned as grounds of exclusion, were removable in the same way. Viçveçvara in the Madanapārijāta states generally, that the right to inherit revives when the defect has been removed either by a successful cure or by performing an expiation.[3] I quite concur in the opinion advanced by Mr. Mayne (§§ 508—513), that the wide extension given to the moral defects causing exclusion by the Brahmans has originated in the advantages which they secured to themselves by devising a corresponding system of expiation. There are some cases, however, which may perhaps be viewed as exceptions to this rule.

Penances.

Thus the existence of a strong feeling against a son who ill-treats his father, is evidenced by numerous texts, and

Undutiful sons.

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[1] Cust. Pictures of Indian Life, p. 141.

[2] Jagannātha. Dig. V. 5, cccxxi—cccxxvi. The two terms in Colebrooke's Translation—'one afflicted with elephantiasis' and a leper—are both equivalents for the Sanskrit Kushṭhin.

[3] (*For the Sanskrit, see Appendix.*)

it would be only natural, therefore, if the father, in distributing the property, were allowed to punish an undutiful son by allotting a smaller share to him than to his brothers. The Commentators take care to direct that the wrongs received from a son must have been of an aggravated character, in order to justify such treatment as this. Thus it is observed in the Sarasvatīvilāsa (§ 151), that the term 'an enemy to his father' does not denote one who is simply disaffected towards his father on account of his partiality for another son, but one who forgets himself so far as to say 'He is not my father.' Others explain the term an 'enemy to his father' to mean 'one who beats his father,'[1] or 'one who attempts his father's life or commits other hostile acts against him.'[2] I may be allowed to point out that in my own country such persons as have committed a heavy offence against either of their parents may be disinherited by them, the enquiry into the *quaestio facti* being left to the judge.

The prodigal.

To protect the family property against waste by a prodigal son or brother would have been an equally natural tendency. The exclusion of the prodigal is peculiar to the Bengal School; for though one of the two texts on which this law is rested by Jagannātha is quoted in the other schools as well, the writers of these schools have adopted a different interpretation of it. They do not refer the term *vikarmasthāh* in the text of Manu (IX. 213) to gambling and the like propensities[3] alone, but to vice in general. Jagannātha's Digest (V. 5, cccxv—cccxvii) contains a copious discussion of the case of a prodigal. Far from being debarred of his entire share of the estate, he shall lose so much of it only as he has wasted. There is nothing in this rule certainly to offend the nicest sense of equity.

Members of a religious order.

The exclusion of all members of a religious order is a logical consequence of the rule that the entrance into a religious order and consequent relinquishment of property operates like civil death in the Law of Inheritance.[4] In the same way monks and nuns used to be incapable of inheriting in Europe in the Middle Ages.

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[1] ताडनकृत् Dāyakramasangraha. [2] मारणादिकृत् Jagannātha.

[3] Kullūka says, it means 'addicted to gambling, intercourse with bad women, and the like acts.' Rāghavānanda and the Dāyakramasangraha (III. 6), 'addicted to gambling, drinking and the like habits.' Medhātithi, 'those who do forbidden acts and neglect the affairs of the joint-family.'

[4] See *ante*, p. 175.

Women.

The Smṛiti texts on exclusion were evidently framed for men only, in accordance with the early law regarding the general incompetency of women to inherit. In the time of the Digest-writers, however, this law had become obsolete long ago, and thus we find it stated in the Mitāksharā that the textual causes of exclusion apply in the case of females as well as of males. This statement is reiterated in the Vīramitrodaya (253), Vaijayantī and Madanapārijāta. According to the Sarasvatīvilāsa (§ 149), those women only are excluded who are Nirindriya, *i. e.*, who have not the use of a sense or of a limb. Incontinent widows are excluded from inheriting and from a share on partition in all the schools. There does not seem to be sufficient authority for extending this rule to daughters and other female heirs. Harsh as all these rules may seem, they were considerably mitigated in practice by several important restrictions:—

Removal of disability.

First—The right to succession revives when the disability has been removed. The Mitāksharā (II. 10. 7), Vivādatāṇḍava and Mayūkha (IV. ii, 2) refer to the cure of bodily defects or mental disorders only, but Mitramiçra (253) and the Commentators of the Mitāksharā, Viçveçvara, and Bālambhaṭṭa, refer to penances as well as the means of removing the civil consequences of a moral fault. Jagannātha,[1] on the other hand, speaks of penances alone as annihilating in his opinion the consequences of civil acts committed in a former existence. The disqualified heir, whose disability has been removed, is compared to the son born after partition by the Digest-writers of the Mitāksharā School, but they give no clue as to the way in which this analogy has to be worked out.

Subsequently arising disqualifications.

Secondly—A share obtained on partition or by inheritance, after having once vested in a person, is not divested by a disability arising afterwards.[2] This rule, which is laid down by Vijnāneçvara and his followers,[3] is of considerable importance in deciding the vexed question as to whether subsequent incontinence in a widow will divest her estate after it has once vested. This question has been answered in the affirmative by Jagannātha, and the same view was taken by Sir Th. Strange and others, but the opposite doctrine seems now to be established in all provinces. There is indeed no reason why the analogy of

Subsequent inchastity of a widow.

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[1] See above, pp. 274, 277.

[2] Mayne, § 514.

[3] Mitāksh. II. 10. 6; Viramitrodaya 253, etc.

the other disabilities should not be applied to the case of the incontinent widow, although this case is not discussed in the Indian Digests in connection with exclusion from inheritance, but in the Chapter on the Widow's Succession. It may be observed that the early Legislation of India appears to have been more severe on the incontinent widow than the era of the Commentators. The unpublished Smriti of Hārīta[1] (62-63) contains two Çlokas to the effect that a wife, *i. e.*, widow, may keep the property while she remains chaste.[2] In the opposite case, she shall lose it and shall be given so much only as will preserve her from starvation. An even more rigid rule is to be found in the Smṛiti of Parāçara, who says (Chapter X), that a wife who has been unfaithful to her husband and has brought forth a child after adulterous intercourse, whether in her husband's lifetime or after his death, shall be turned out of the house. But neither of these two texts is quoted in the modern compilations on law.

The disability is personal only.

Thirdly—The incapacity to inherit is purely personal. The legitimate sons of disqualified heirs take the share of their father. This is the general rule, but there are several traces of the existence of a stricter view which was opposed to the marriage of disqualified heirs on principle. Manu says (IX. 203): 'If the eunuch and the rest should *at any time* desire to marry, their sons shall be heirs,' and this 'at any time' is interpreted by Kullūka as a hint that disqualified heirs, as a rule, ought not to marry. Gautama (XXVIII. 44) refers to the son of an idiot only. Nārada (XII. 31—38) gives a list of persons unfit to marry, which closely resembles the list of disqualified heirs. The same author states as a necessary preliminary to marriage (XII. 8—19), that a suitor shall be examined in order to ascertain his manly vigour, and gives some curious details regarding the signs by which the fact of potency and of the reverse was thought to be ascertainable. Yājnavalkya, on the other hand, endeavours to explain how an impotent man even may have a son. This is why he says that even the son of the wife (Kshetraja) of a disqualified man may inherit (II. 141). Most of the modern writers are agreed about the eligibility of all disqualified heirs for marriage.

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[1] Cod. Haug. 53 of the Munich Library.

[2] The second Cloka of Hārīta is quoted in the Mitāksharā II. 1. 37 and other compilations as showing the widow's right to inherit if she is chaste.

The Sarasvatīvilāsa (§ 149) seems to lay down that those who are born blind or deaf are marriageable in every case, the madmen, idiots and the dumb in certain cases only, and the impotent and outcast in no case.[1] Similar views appear to have been held by Medhātithi.[2]

Claim to maintenance.

Fourthly—The disqualified heir and his family have a claim to maintenance. The wives and daughters of such persons have never obtained a right to inherit, but their daughters were to be maintained up to the time of their marriage, and their wives, while they remained chaste and obedient.[3] This is the Smṛiti Law, which has been modified by the Modern Jurists so far, that the daughters shall have their marriage expenses defrayed besides the cost of maintaining them, and that mere disobedience on the part of a woman may not bar her right to maintenance, though unchastity may.[4]

Tendency of decisions.

In spite of all the restrictions thus placed on the disinherison of disabled family members, the Indian Law of Exclusion cannot but jar on an European mind. However, the law as administered in the Courts differs so much from the rigid rules of the Sanskrit treatises, that it may be questioned, whether the Courts have not been carried too far in an opposite direction, pushing what was in itself a humane and natural tendency to its extreme consequences. It is true that the religious motive appears to have been a specially powerful agency in framing the rules on exclusion from inheritance, and legal rules founded on purely religious, not to say superstitious, considerations must not pass unchallenged into a modern system of law. But it should also be considered that in a primitive state of society, in which collective forms of property were generally prevalent, a natural reluctance would be felt against recognizing a disabled family member out of whom no work could be got as an equal sharer with his capable coparceners. A wide extension of the reasons for exclusion from inheritance is common to several archaic legislations. I will terminate this Lecture with a summary of the rules of the Sachsenspiegel on this head. That old North-German law-book, the contents of which are closely analogous to the old laws of the Anglo-Saxons, mentions the following sorts of disqualified heirs:—

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[1] *Read* 'Unless they be eligible for marriage,' *for* "Even if they are eligible for marriage," p. 32. (Foulkes.)

[2] Gloss on Manu IX. 203.

[3] Yājnavalkya II. 141, 142.

[4] Mitāksh. II. 10, 15. Mayūkha IV. 11, 12; Smṛitichandrikā V. 43; Varadarāja p. 14; Madanapārijāta; Vivādātaṇḍava. The other works do not draw any distinction between unchaste and refractory wives, as regards their right of maintenance.

The Sachsenspiegel on exclusion from inheritance.

1. Outcasts, illegitimate children, monks and nuns, one who has killed his father or other relative, whose presumptive heir he is, or who has forcibly dispossessed him, or robbed him of his property. These persons are entirely incapable of inheriting. 2. Dwarfs, helpless cripples, persons of neutral sex, and lepers are equally disqualified, but their next-of-kin have the duty of maintaining them. 3. The deaf, the dumb, the blind and the lame, as well as those who have no hands or feet, may inherit ordinary property, but they cannot succeed to any feudal estate. The analogy of these rules with the corresponding provisions of the Indian Law is self-evident.

APPENDIX A.

(Containing those Sanskrit texts from unpublished works which have been translated in this volume.)

Page 83, note 5.

पुंसां च षोडशे वर्षे जायते व्यवहारिता।

Page 87, note 2.

संविभागो हि साधारणधनानां स्वामिनामेकैकत्र भागे स्वामिन एकैकस्य स्वाम्यं व्यवस्थापयति नापूर्वमुत्पादयति।

Page 101, note 1.

पित्रैव तु न्यूनाधिकविभक्तानां पितृकृतत्वात्स एव धर्मः। न तत्रोत्तरकालं विप्रतिपत्तव्यम्।

Page 102, note 1.

एतेन विभागकाले पितुरपि भागो दर्शितः।

Page 118, note 1.

पितृद्रव्यविरोधेन यदर्जितमिति पितृद्रव्यविरोधेन यन्मैत्रादिकमर्जितमित्यर्थः।

Page 120, note 1.

मैत्रादीनां धनानां पितृद्रव्यानुपयोगेनार्जितानां न विभागः।

Page 121, note 1.

शौर्यविद्याधनयोरर्जकस्य भ्रातुर्द्वावंशौ न मैत्रादौ विशेषवचनाभावात्।

Page 121, note 3.

यत्पूर्वपुरुषक्रमायातं क्षेत्रारामादिकं द्रव्यं कथमपि परेणापहृतं यो दायादानुमत्या तदुद्धरेत्तदसौ दायादेभ्यो न दद्यात्। यत्पुनर्दायादानुमतिमन्तरेणोद्धृतं तस्य चतुर्थमंशमुद्धर्ता गृह्णीयात्। शेषमुद्धारकेन सह सर्वे भजेरन्।

Page 126, note 2.

तत्पित्राद्यर्जितधनविषये तु सममेव पितापुत्रयोर्विभागकर्तृत्वम्। पित्रर्जितेऽपि धने कदाचित्पुत्रा एव विभागकर्तारो भवन्ति।

Page 126, note 3.

मातरि ध्रियमाणायां अस्वतन्त्रा एव पुत्राः। यथाह मनुः। …। मातुः कुटुम्बभरणसामर्थ्ये सत्येतत्।

Page 127, note 2.

तुल्यस्वाम्येन समांशित्वं जीवत्यपि पितरि पुत्रेच्छाविभागश्चोत्पाद्यते।

Page 129, note 1.

अगृहीतवेदत्वमपि ह्यविभागे कारणम्।

Page 130, note 1.

पारिशेष्याद्विभागकर्तुरिच्छया विभागवैषम्यमिच्छया विभजेत्सुतानित्यत्र विधीयत इति सिद्धम्। अत्र नारदः। पित्रैव तु विभक्ता ये समन्यूनाधिकैर्धनैः। तेषां स एव धर्मः स्यात् सर्वस्य हि पिता प्रभुः। न चैतदुद्धारवाक्यार्थविषयमिति वाच्यम्। पिता प्रभुरिति वचनात्। न ह्युद्धारे पितुः प्रभुत्व किंतु शास्त्रस्य।

Page 130, note 2.

यत्त्विच्छया विभजेत्सुतानित्यत्र मिताक्षरायामिच्छया स्वातन्त्र्येण विभागप्रकारमपहृत्योद्धारविभागसमविभागविषयत्वमेव नियमितं। तद्विष्णुबृहस्पतिकात्यायननारदादिभिस्तत्र तत्र स्वातन्त्र्यैच्छिकविभागप्रतिपादनेन विरोधाच्चिन्त्यम्।

Page 131, note 2.

एवमन्यान्यपि विषमभागप्रतिपादकानि गोतमादिवचनानि बहूनि सन्ति तानि ग्रन्थभूयस्त्वभयान्नेह प्रदर्शितानि। एवं विषमभागस्य…लोकविरुद्धत्वात्।

Page 131, note 3.

कलौ सदा सम एव भागो न विषमः।

Page 134, note 3.

पुत्रपौत्राणां पितृधनाभावे। नाढ्यविधवास्नुषाणां च भरणम्।

Page 136, note 2.

स्मृतिचन्द्रिकायां तु बहुधने जीवनमात्रमल्पधने पुत्रसमोंऽश उक्तः। … सपुत्रायास्तु पुत्रांश एव भागः। धनयुतायास्त्वर्धांशः।

Page 138, note 1.

एवं पितामहीशब्देऽपीति वयं प्रतीमः ।

Page 138, note 2.

पैतामहधनविभागे मातांशं न लभते किंतु स्वाभरणादिकमेव । यदि कुर्यात्समानंशान् पत्न्यः कार्याः समांशिकाः । तथा पितुरूर्ध्वं विभजतां माताप्यंशं समं हरेत् । इत्यनयोः केवलपितृप्रधानकस्वाम्योपेतधनविषयत्वात् ।

Page 158, note 4.

क्रीतस्वयंदत्तकृत्रिमाणां दत्तकत्वसाम्याच्च कलौ च भवन्त्येव ।

Page 165, note 1.

संविदा तु द्व्यामुष्यायणानामुभयोरुपकारत्वम् ।

Page 165, note 2.

गोत्ररिक्थे (Manu IX, 142) इदं जनकस्य पुत्रसत्त्वे तदभावे तु जनकस्यापि दत्त एव रिक्थहरः श्राद्धदश्च । यत्त्वावयोरयमिति परिभाषया दत्तः स एव । द्व्यामुष्यायणो न तु संविदं विना दत्तोऽपीति तन्मूलवचनम् ।

Page 184, note 2.

चतुर्थार्थांशं लभते समानांशो न भवतीत्यर्थः । Cal Ed.

Page 184, note 2.

दत्तकश्चतुर्थांशं लभते न समांशमित्यर्थः । Ben. Ed.

Page 187, note 1.

शूद्रायामनूढायामनियुक्तायामपि जातः सुत एव । एवं यद्यपि दासस्य दासी तथापि....सोऽनुज्ञातः पित्रा सममंशमौरसेन हरेत् । जीवितभागे क्रियमाणे । अन्यथा वा यदि ब्रूयादेष वः समांश इति । ....

तं कुर्युः स्वांशापेक्षया आत्मनो द्वौ द्वौ गृह्णीयुर्भागौ तस्यैकं दद्युः । ......

अभ्रातृको हरेत्सर्वमसत्स्वौरसेषु सर्वं रिक्थ स एव हरेत् । यदि दौहित्रो न स्यात् । सति तस्मिन्नौरसवत्कल्पना दौहित्रस्यान्यस्याश्रुतत्वात् । तस्य च प्रकृतत्वेन बुद्धौ संनिवेशात् ।

Page 187, note 2.

शूद्रस्यानूढशूद्रापुत्रः।

Page 189, note 2.

अनूढाजो भ्रातृदौहित्राभावे सर्वं गृह्णीयात्। दौहित्रे सत्यर्धम्।

Page 193, note 2.

यदा सगोत्रादयो गृह्णन्ति तदा तैः सह पत्न्यप्येकमंशं हरेत्। पत्नीदायस्याचार्यस्य पक्षो न भवति। तत्र सर्वमेव यद्धनं सपिण्डाद्या गृहीत्वा स्त्रियो रक्षेयुरिति मुख्यः कल्पः। तदसंभवेऽशनवसनयोः पर्याप्तं क्षेत्रादिकमंशत्वेन व्यपोह्य शेषं गृह्णीयुः।

Page 195, note.

अन्योदर्यस्तु संसृष्टी नान्योदर्यधनं हरेत्। असंसृष्ट्यपि चादद्यात्सोदर्यो नान्यमातृकः॥

Page 199, note 2.

एकवचनं जात्यपेक्षया। अतश्च यदा सवर्णा असवर्णाश्च ताः सर्वाश्चतुस्त्र्द्व्येकभागाः स्युरित्यनेन क्रमेण धनं विभज्य गृह्णन्ति।

Page 199, note 5.

पत्न्यभावे त्वपुत्रधनं स्नुषैव लभते न दुहिता। तेषां पुत्रादिस्नुषान्तानामभावे दुहितरो धनं गृह्णीयुः।

Page 200, note 1.

पितृभागं न लभते किंतु यावद्विवाहं भरणं विवाहोपयुक्तं द्रव्यं पितृभागं तु विवाहानन्तरमेव लभत इति।

Page 201, note 1.

वन्ध्यत्वादिना।

Page 202, note 2.

अयमर्थो याज्ञवल्क्येनापि दुहितरश्चैवेत्येवकारेण घटितः।

Page 203, note 3.

मातर्यपि वृत्तायां पश्चात्पितरि तद्ग्रहीतरि वृत्ते।

Page 204, note, line 1.

सत्त्वं तु मातुरेव प्राथम्यं प्रतीयते।... तेन विष्ण्वादौ श्रौतोऽपि क्रमो विजातीयपितृपरः।

Page 205, note 2, para. 1.

भ्रातृसद्भावे पित्रोरधिकारः पितृपितामहाद्यर्जितधनविषयः ।
यत्पितृद्रव्याविरोधेनार्जितं तत्पित्रोः सद्भावे भ्रातॄणामेव ।

Page 205, note 2, para. 2.

तथा चैषा व्यवस्था । यदि भ्रातृभिः स्वपितृधनानुपघातेन संभूयसमुत्थानेन धनमर्जितं तदापि पित्रोः सद्भावेऽपि भ्रातर एव धनग्राहिणः । यदा तु पितृपितामहाद्यर्जितं धनं न तदा भ्रातॄणां धनग्राहित्वं किंतु पित्रोरिति ।

Page 206, note 2.

पित्रोरभावे भ्रातरस्ते तु सोदरा एव प्रत्यासन्नतरत्वात् । ..न तु सापत्न्याः ।

Page 207, note 1.

स्वपितुर्धनग्रहणाधिकारानन्तरं स्मृतत्वात् ।

Page 208, note 1.

तत्र प्रथमं समानमातापितृका भ्रातरो गृह्णीयुः । पित्रवयवाधिक्येन प्रत्यासन्नतरत्वात् । तदभावे समानमातापितृका भगिन्यो गृह्णीयुः । तासां भिन्नमातृकभ्रात्रपेक्षया संनिहितत्वात् । भिन्नोदराणां मात्रा भिन्नबीजानां पित्रा विप्रकर्षात् । तदभावे तु तेऽपि गृह्णीयुः । सोदर्याः सन्त्यसोदर्या भ्रातरो द्विविधा यदि । विद्यमानेऽप्यसोदर्ये सोदर्या एव भागिन इति स्मरणात् ॥ तत्रापि प्रथमं समानपितृकाः पश्चात्समानमातृका बीजस्य प्राधान्यात् प्रत्यासत्तेश्च क्रमनियामकत्वात् । तद्यथा । एकस्य द्वे पत्न्यौ । तत्रैकस्यां द्वौ पुत्रावन्यस्यामेकः पुत्रस्तेन जनितोऽन्तरं च द्विपुत्रान्यपतिमाश्रित्य पुत्रान्तरं जनयामासेति तस्मात्त्रयः पुत्रा बभूवुः । तत्र पूर्वयोरन्यतरस्मिन् प्रमीते तद्धनं समानमातापितृक एव प्रथमं गृह्णीयात् । तदभावे समानपितृको भिन्नोदरोऽपि गृह्णीयात् । बीजप्राधान्यात । तदभावे समानमातृको भिन्नपितृकोऽपीति ।

Page 209, note 1.

एकपिण्डदानक्रियानुप्रवेशिनः सपिण्डाः ।

Page 211, note 1.

तदत्र सोदरो भ्रातातिशयेन प्रत्यासन्नः समानसंप्रदानोदकादिदातृत्वात् । तत्पुत्रः पुनरीषद्व्यवहितः । पितृपिण्डे संप्रदातृत्वात् । तत्पौत्रस्तु ततो व्यवहितः । पितृपितामहपिण्डयोर्भिन्नसंप्रदानकत्वात् । तत्पौत्रस्त्वत्यन्तव्यवहितः । पिण्डत्रयेऽपि संप्रदानभेदात् । एवं भ्राता तत्पुत्रस्तत्पौत्र इति पितृसंततौ त्रयः प्रत्यासन्नाः सपिण्डाः । एवं पितामहसंततौ प्रपितामहसंततौ च । एषामभावे पित्रादित्रयस्य ये प्रपौत्रास्तेषां पुत्रादित्रयं सापिण्ड्याद्धनग्राहकम् ।

Page 215, note 1, para. 1.

बन्धूनां सपिण्डत्वेऽपि भिन्नगोत्रत्वाद्भिन्नोक्तिः ।

Page 215, note 1, para. 2.

गोत्रजाभावे बन्धुः पितृष्वसृमातृष्वसृमातुलसुतादिः ।

Page 217, note 1.

सपिण्डस्त्रीणां च व्युदासार्थं तासामतद्गोत्रजातत्वात् ।

Page 218, note.

यदपि चार्थवादवचनं तस्मात्स्त्रियो निरिन्द्रिया अदायादास्तदपि यथाप्राप्ति वर्णनीयम् । अनुवादकत्वादिति । पुत्रसद्भावविषयत्वेन व्याख्येयम् ।

Page 230, note 1.

प्रीतिकर्मणि रतिकाले पत्या दत्तम् line 2.
प्रीतिकर्मणि नमस्कारादौ श्वशुराभ्यां दत्तम् । line 6.

Page 231, note, line 10.

मातामहेन स्वभार्यायै यद्दत्तं तत् ।

यौतुकशब्दः पृथग्भावेन च स्त्रीधनम् । तत्र हि तस्या एव केवलायाः स्वाम्यम् । line 12.

Page 236, note 2.

पार्वत्यादिप्रीत्यर्थं व्रतादौ स्त्रिया यल्लभ्यते तदपि स्त्रीधनमिति ।

Page 238, note 1.

वाचनिकातिरिक्तं स्त्रिया नेति वक्तुं साधारणधनेषु स्वाच्छन्द्यं निषेधति नेति ।

Page 239, note 1.

संप्रतिरोधो निगडादिबन्धः । line 1.
बन्दिग्रहणविग्रहादौ for °निग्रह° । line 4.

Page 241, note 1.

तमिमं दायं भर्तृदत्तं वानिषिद्धेन मार्गेण देवराद्यनुमतिमन्तरेणाप्याप्नुयात् ।

Page 249, note 1.

आदिपदाद्विक्रयक्रयपरिग्रहादि प्राप्तम् ।

Page 249, note 2.

आधिवेदनिकं चैवेति प्राचापपाठो न युक्तः । एतस्य वैयर्थ्यात् ।

Page 250, note 1.

स्त्रीधनशब्दोऽयौगिक इति केचन वर्णयन्ति तदनुपपन्नं .. यौगिक एवेत्यनेनाभिप्रायेणाह स्त्रीधनशब्दस्य यौगिक इति ।

Page 250, note 3.

च शब्द आद्यर्थः । तेन च स्त्रीधनान्तरपरिग्रहः । तद्यथा । कार्याः पत्न्यः समांशिकाः । माताप्यंशं समं हरेत् । स्वात्स्वादंशाच्चतुर्भागम् । मातुः पारिणाय्यं स्त्रियो विभजेरन् । अन्यदपि यत् स्त्रीस्वामिकं तत्स्त्रीधनं मन्वादिभिः प्रकीर्तितम ॥

Page 255, note 1.

Smṛitich. XI 1, 31. The manuscripts have माता गृह्यमाणं मात्रर्थमेव । अध्यग्न्यादिस्त्रीधनवत् । नोभयार्थम् ।

Page 268, note 2.

मातुर्धनं दुहितर आप्नुयुः । तदभावे दौहित्रीणां दौहित्राणाम् । तदभावे तदन्वये ये जाता दौहित्रास्तेषामित्यर्थः । दौहित्रा एव गृह्यन्ते न दौहित्रीसंततिः । दौहित्राणामभावे पुत्रपौत्रादयः क्रमेण धनभाजः ।

Page 268, note 3.

यत्त्वपुत्रस्य पितुर्विभागकाले पत्युर्वा रिक्थत्वेन मात्रा लब्धं तत्पुत्रैर्दुहितृभिश्च समं विभाज्यम् ।

Page 269, note 1.

अनूढाः कन्यास्तदभाव ऊढा गृह्णीयुः । तदभावेऽन्वयः पुत्रपौत्रादिः सर्वं हरेदिति कल्पतरुविज्ञानेश्वरौ ।

Page 273, note 2.

इन्द्रियं वीर्यधैर्यप्रज्ञाबलादि तासां नास्ति ।

Page 274, note 1.

रोगाद्विगतहस्तपादाः ।

Page 275, note 4.

बधिरोऽपि जात्या उन्मत्तादयोऽचिकित्स्याः

Page 276, note 2.

उन्मत्तः वातपित्तश्लेष्मसंनिपातग्रहावेशोत्पन्नैरुन्मादैरप्रतिसमाधेयतयाविष्टः ।

Page 277, note 3.

विभागोत्तरकालमौषधादिना निर्दुष्टः प्रायश्चित्तेन वा तदाविभक्तेषु सुतो जातसवर्णायां विभागभागित्यनेन न्यायेनांशप्राप्तिरस्त्येव ।

NOTE *to pp.* 44, 46.

BURMESE LAW.

SINCE writing the above, I have become acquainted with the valuable *Notes on Buddhist Law*, published by Mr. J. Jardine, the Judicial Commissioner of British Burma, together with contributions from Dr. Forchhammer, the learned Professor of Pāli, of Rangoon (7 fasciculi, published in 1882-83), and from native scholars. These important publications mark the beginning of a new epoch in the study of Burmese Law. The Dhammathats of Burma, like the Dharmaçāstras of the Hindus, from which they have derived their name and a considerable portion of their contents, are equally important from a practical, and from a historical, point of view. Buddhist Law,—*i. e.*, the Law of the Dhammathats,—jointly with the established usages of the country, has been made the *lex fori* of the Burmese Courts, under the Burma Courts Act of 1875, in all questions regarding succession, inheritance, marriage, or caste, or any religious usage or institution of the Buddhist inhabitants of British Burma. The *Notes on Buddhist Law* contain a number of highly valuable and suggestive disquisitions, from the pen of Mr. Jardine, on a number of difficult points connected with the Burmese Law of Marriage and Divorce, which his careful study of the principal sources of Burmese Law has enabled Mr. Jardine to elucidate with signal success.

As regards the antiquarian researches of Mr. Jardine and Dr. Forchhammer, the results of their learned labours might seem calculated, at first sight, to diminish the historical value of Burmese Law, instead of enhancing it. Dr. Forchhammer has succeeded in establishing the fact that the majority of the now extant Codes of Burma were composed during the reign, and at the instigation, of King Alompra and his successors. They cannot be older, therefore, than the second half of the eighteenth century. It appears that, before the rise of the powerful ruler just referred to, judicial decisions in

Burma used to be based entirely on the so-called *hpyathtoons,* or inspired judgments and moral precepts attributed to Buddhas, Bodhisattas, and other legendary personages. Dhammathats were not unknown in those times, but they were not recognized as the general standard of law. When, however, King Alompra and his successors had extended their dominion in every direction, and founded one of the greatest empires of Asia, it became necessary to promulgate a written Code of Law for the guidance of their numerous Courts of Justice. It was among the Talaings chiefly that Indian Law had taken root, and improved editions of the law-codes of India had long been in general use among the Talaings. The Burmese Kings, after having conquered the Talaings, availed themselves of their law-codes, and of Talaing codes previously translated into the Burmese language, and made them serve as basis for the compilation of their own Codes of Law. Thus, *e. g.*, it has been discovered by Dr. Forchhammer that the Manu Kyay Dhammathat, so well known through Richardson's English Version, was composed between 1758—60 by the order of King Alompra, and that Talaing Adaptations of Indian Codes must have formed the principal source of the Manu Kyay. The introductory part of the Manu Kyay has been taken from a well-known Pāli work, the Milinda Panha; and the moral precepts inculcated in many passages of the Manu Kyay may be traced to the eight Maggas, to the Agatis and other works on Buddhist ethics. Some of the national Burmese *hpyathtoons* have also found entrance into the Manu Kyay, and many of the legal rules embodied in that compilation may be traced to their source in the customary law of the country.

It appears, then, that the Dhammathats of Burma, as a rule, are altogether recent productions. However, the case is quite different as regards the Talaing originals, from which the original stock of these works appears to have been derived. The Talaings are an ancient nation, which early attained a certain degree of culture through frequent and long-continued communication with the natives of India. The earliest inscriptions of the Talaings, which belong to the fourth century A. D., exhibit the same mode of writing as the contemporary inscriptions of Southern India. One of the Talaing law-books, the Dharmavilāsa Dhammathat (Dharmavilāsa Dharmaçāstra in Sanskrit) was composed as long ago as A. D. 1174.

Another, the Wagaru Dhammathat, was written at the close of the thirteenth century by Wagaru, a King of Martaban. This work was translated into Pāli and Burmese by Budhaghosha, an ancient Jurist, who is reported to have been called to the Courts of Pugan and of the King of Siam for the purpose of settling disputed points of law. Budhaghosha flourished in the sixteenth century. His version of the Wagaru seems to lie at the bottom of the Manusāra, which is going to be edited by the Rev. Dr. Führer. An edition and translation of the Wagaru, together with notes and an essay, has been prepared by Dr. Forchhammer, and is in course of publication. It is hardly advisable to discuss any question connected with the early history of Burmese Law before Dr. Forchhammer's Essays will have appeared. There is one point, however, in the published results of Dr. Forchhammer's researches, which claims special notice here, on account of its close connection with the question regarding the antiquity of the Code of Manu.

Both Dr. Forchhammer and the Rev. Dr. A. Führer (whose labours have been referred to in this volume) consider it probable that the Burmese editions of the Indian Smṛitis are based on an earlier version of the Code of Manu than the one now extant. Dr. Forchhammer has pointed out that ideas of a sacerdotal nature are entirely foreign to the Burmese Dhammathats, whereas they represent one of the leading features of the Code of Manu. The Indian Legislator recommends animal sacrifice, which is strictly opposed to the fundamental principle of Buddhist ethics that no sentient being should ever be injured, and never referred to in the Dhammathats. The iniquitous rules of the Indian Smṛitis regarding the privileges of the higher castes, of the Brahmans particularly, are reiterated to a certain extent in the Dhammathats. Yet this portion of Burmese Law seems to have been immediately derived from Buddhistic, rather than from Brahmanical, literature, and it does not prove anything, therefore, with regard to those Smṛitis which were consulted by the compilers of the earliest Dhammathats. On the other hand, supposing the authors of these works to have known and used the Code of Manu as it now stands, it would be necessary to assume that they have eliminated from their reproductions of it, with conscious effort, all ideas of a sacerdotal nature. This, Dr. Forchhammer says, would presuppose a power of discrimination and a degree of literary skill, of which the

Burmese writers have shown themselves destitute otherwise. Therefore the Burmese writers must have become acquainted with the Code of Manu before it had been permeated by Brahmanism, and before the Brahmans had gained general ascendency throughout the Continent of India. Nor could the Code of Yājnavalkya have existed at the time when the earliest Dhammathats were composed. The Burmese Laws are divided into the eighteen titles originally mentioned by Manu, whereas Yājnavalkya's clear and simple arrangement of the sacred laws under the three heads of Āchāra, Vyavahāra, and Prāyaçchitta, is entirely foreign to the Dhammathats.

It is impossible, as hinted before, to do full justice to Dr. Forchhammer's views before his forthcoming essay and his edition and translation of the Wagaru have been published. Thus much, however, may be observed that the hypothesis of a non-Brahmanical Indian original of the Dhammathats is by no means irreconcilable with the theories put forth in the present volume regarding the high antiquity of the Code of Manu in its present version, and its existence prior to the compilation of the Dhammathats. A Buddhist version of the Code of Manu might have existed in India by the side of the Brahmanical version. The Buddhist version might have been transferred into Burma, together with the other standard works of the Buddhists. It might have been lost, in after times, in India, whereas the Talaing and Burmese translations of it were handed down to posterity.

Supposing, then, a Buddhist version of the Code of Manu to have been co-existent with the Brahmanical Code, which is likely to have been the earlier version of the two? Certainly not the Buddhistic version, we should say. Brahmanism, according to the generally prevailing theory, is of earlier growth than Buddhism, and the Laws of Manu differ very little in substance from the Law of the Dharmasūtras, which were composed during the earliest epoch of Indian literature. There is one unbroken chain of tradition from the earliest down to the latest productions of the Smriti writers of India, and the privileges of the Brahmans and the principal doctrines of Brahmanism come out as prominently in the Dharmasūtras as in the most recent metrical compositions.

As regards animal sacrifice in particular, its inculcation in an Indian law-book is indicative of an early date of composition rather than the reverse. The religious usages of the Vedic epoch were rife with sacrifices involving the slaughter of many thousands of animals. The writers of the Sūtra period continued to adhere to the principle that it was no sin to kill sentient beings for sacrificial purposes. It is not till we come to the age of the metrical Smṛitis that we find the Puritan ideas of the Buddhists and other ascetical sects gaining ground on the broader views of the early writers on law. Thus the Code of Manu itself, while repeating the old doctrine that the slaughter of animals is permitted for sacrificial purposes, though not otherwise, has several other passages in which it is declared absolutely reprehensible. A highly characteristic passage of this sort may be found in Manu, v. 48. This text is quoted in Vasishṭha's Dharmasūtra, IV. 7, as an enunciation of Manu, proving that the slaughter of animals at a sacrifice is not slaughter in the ordinary sense of the term. However, in the now extant version of the Code of Manu, and in a corresponding passage of the Vishṇu-smṛiti (LI. 71), the conclusion of this text has been altered so as to fit in with the Puritan ideas of a subsequent epoch regarding the killing of animals for any purpose whatsoever. See Prof. Bühler's Note on Vasishṭha, IV. 7 (Sacred Books of the East, Vol. XIV. p. 27).

Another argument in favour of the asserted priority of the extant Code of Manu to the Dhammathats may be derived from the fact that these works betray an acquaintance with the contents of the Bṛihaspati, Vyāsa, Nārada, Yājnavalkya and other Smṛitis which, as shown in these Lectures, must have been compiled at a later period than the Code of Manu. Several analogies between these Smṛitis on the one hand, and the Code of Manu on the other hand, have been pointed out by Mr. Jardine and by Dr. Forchhammer himself. Here are some further instances of this parallelism, which have been collected from Richardson's Dhammathat.

Dhammathat, II, 1, p. 30. In a dispute whether a deposit was made or not, the parties shall be tested by the ordeal of water. Nārada (I. 5, 104) directs the performance of an ordeal in all cases of denial of a deposit.

Dhammathat, II, 12, p. 48. If the knife, or spade, which has been handed over to an agricultural labourer for his work, be lost by him, he must replace it. Nārada (II. 6, 4) recommends workmen to preserve carefully the utensils of their master.

Dhammathat, III, Introd., p. 69. Of boundary marks between two cities or villages, the original ownership shall not be lost, though they may have been in the possession of strangers for hundreds or thousands of years. All Indian writers agree in excepting boundaries from the general provisions of the law of prescription; and Nārada (I. 4, 11) speaks of certain species of property which are not lost to the rightful owner, even though they have been enjoyed by strangers for hundreds of years.

Dhammathat, III, 7, p. 72. If a debtor claims to have paid his debt, and the creditor denies it, let the creditor make an oath. If the amount of the sum in dispute be ten tickals, let him make an oath at the head of the stairs. If the amount be twenty tickals, he shall make an oath at the bottom of the steps. If it be thirty tickals, let him make an oath at the foot of some respectable tree under the protection of a Nat (spirit). If it be forty, fifty, or sixty tickals, he shall be made to swear at the foot of an image of the most excellent god. In other cases he shall be made to undergo one of the ordeals, by fire, water, rice, or lead. A similar gradation of oaths and ordeals, varying in heaviness according to the amount of the sum in dispute, may be found in the Vishṇu-smṛiti (IX. 3-14). Vishṇu says expressly that the value of the property claimed must be estimated in gold, and the choice of a particular oath made to depend on the value of the property. Thus, *e. g.*, supposing the value to be less than one Krishṇala, the defendant must be made to swear by a blade of Dūrvā grass. If it be less than five Krishṇalas, he shall swear by a lump of earth taken from a furrow. If it be more than half of a Suvarṇa, he must be subjected to one of the ordeals, by balance, by fire, by water, or by poison. These rules have been further developed by subsequent writers, such as Kātyāyana, Pitāmaha, and Bṛihaspati, by introducing a similar climax among the ordeals. Thus, *e. g.*, it is ordained by Kātyāyana, that the ordeal by rice shall only be administered in light cases, whereas the ordeal by poison is reserved for the heaviest cases. Two out of the four ordeals mentioned by Burmese writers,—*viz.*, the ordeals by rice and by lead,—are not referred to in any of the early Smṛitis of India, but they do occur in the Smṛitis of Kātyāyana, Bṛihaspati, Pitāmaha, and Nārada (unprinted recension). The ordeal by rice, it is true, is not performed in the same way in India, as it is in Burma. In Burma, each of the two litigants is made to chew the same quantity of rice, and he who finishes his portion first, is said to gain his cause. In India, the defendant must bite the rice; and he is acquitted, if he does not spit blood afterwards, and if the flesh of his teeth has remained unhurt. The Burmese ordeal by molten lead, into which the defendant has to dip his fingers, corresponds exactly to the Taptamāsha ordeal of the later Indian writers, where a piece of gold has to be fished out of a pot filled with hot oil and butter. See Dhammathat, IX, 11, p. 261.

Dhammathat, III, 10, p. 73. If the parties in a law-suit have laid a wager about the issue of the case, the judge and the pleaders shall take ten per cent. of the sum staked. Bets of this sort are not referred to by any one of the Smṛiti writers of India except Nārada (I. 1, 5, 6) and Yājnavalkya (II. 18.)

Dhammathat, III, 17, 18, p. 75. If the purchaser fails to tender the price of a commodity purchased, at the stipulated time, he must give interest for it. The same rule is laid down by Vishṇu (V. 127, VI. 40), Yājnavalkya (II. 254), Nārada (II. 8, 4), and others, but it cannot be traced to the Code of Manu.

Dhammathat, III, 24, p. 81. 'A Yathay, in the times of a former god, decided thus in Midila.' The sage here referred to seems to be identical with the Yogi, or Yati. Yājnavalkya, the compiler of the Yājnavalkya-smṛiti, which, according to the Introduction, was composed in the province of Mithilā (Tirhut). The drift of the decision quoted may be compared to Yājnavalkya, II. 252, 258.

Dhammathat, III, 28, p. 82. The husband is not liable for debts contracted by his wife, unless they were contracted with his knowledge. According to Nārada (I. 3, 13, 10,) the debts of a wife are never binding on the husband, unless they were contracted for the benefit of the family. Analogous rules are laid down by Vishṇu and Yājnavalkya.

Dhammathat, III, 53, p. 96. There are three sorts of sureties, for the property, for the person, and for the property and person together. These three sorts of sureties may be fitly compared to the three-fold division of suretyship in the Smṛitis of Nārada, Yājnavalkya, and Vishṇu. Manu, on the other hand, refers to two kinds of sureties only.

Dhammathat, IV, 3, p. 117. If cattle have been stolen, the inhabitants of that district are held liable to which the footmarks of the stolen cattle may be traced. The owner of the stolen cattle shall trace the footmarks, and the villagers shall go with him. If the villagers are able to show a place where the footmarks leave the village, they are free from blame, otherwise they must replace the stolen cattle. Yājnavalkya (II. 272) says, that the villagers shall be held responsible if the trace has been carried to their village. Nārada (II. 19, 22-24) ordains that experienced men shall trace the footmarks. The stolen goods have to be replaced by that district to which the footmarks have been traced, unless the place can be shown where the footmarks leave the district.

Dhammathat, VII, 26, p. 192. There are in all sixteen sorts of slaves. Each of these is again divided into several species. Manu does not know more than seven kinds of slaves (VIII. 415). Nārada (II. 5, 23-26) enumerates fifteen kinds, many of which find their counterpart in the Burmese classification. Thus the species of home-born slaves, of purchased slaves, of inherited slaves, of those made captive in war, of given slaves, of pledged slaves, of slaves serving of their own accord, are common to both the Indian and Burmese law-books.

These examples, which might be easily multiplied, will suffice to show that the compilers of the Dhammathats must have been acquainted with the latest productions of the Smṛiti epoch, as well with the Laws of Manu. It is true that some of the analogies quoted may be casual. However, the points of coincidence are far too numerous to be attributed all of them to mere accident. Nor can the retention of Manu's eighteen titles of forensic law by the Burmese writers, and their seeming ignorance of Yājnavalkya's threefold division of sacred law, be taken to prove their want of acquaintance with the Laws of Yājnavalkya. The classification adopted by Yājnavalkya may have been known to the authors of the Dhammathats, though they have not referred to it. They had no occasion for referring to this classification, because they had confined themselves to borrowing one only out of the three principal parts of the sacred law, as distinguished by Yājnavalkya, *viz.*, forensic law. The arrangement of forensic law in eighteen parts may have been derived from the Code of Manu, but it is equally possible that the Burmese writers took it from one of the other metrical Smritis. This classification, far from being peculiar to the Code of Manu, appears to have been universally adopted by the compilers of metrical Smṛitis.

It is distinctly mentioned in the Smṛitis of Nārada and Bṛihaspati, and Yājnavalkya himself, though not referring expressly to the eighteen titles of law, has arranged Civil and Criminal Law under eighteen or twenty heads, as has been pointed out by his Commentators. It is only in the earliest productions of the Smṛiti epoch, the Dharmasūtras, that this classification does not make its appearance. This fact furnishes a further proof in favour of the assumption that the Burmese writers did not become acquainted with Indian Law till it had reached one of its latest stages. Nor does the Burmese tradition, which attributes the composition of the earliest Code of Burma to King Vyomadhi, or Pyoo-mang-tee, in the second or third century A. D., stand in the way of this assumption, the legendary character of that story having been proved by Dr. Forchhammer.

Though the contents of the more recent Smṛitis appear to have been known to the compilers of the Dhammathats, these works, according to the just observation of Mr. Jardine and Dr. Forchhammer, do not betray any acquaintance with the Indian Commentaries. This fact tends to bring back the Introduction of Indian Law into Burma to a comparatively early period, the earliest Commentaries, as shown in these Lectures, having been compiled in the eighth or ninth century. Supposing the borrowing of Indian Law by the Talaings to have commenced in those times when Buddhism, as attested by the Chinese pilgrims, continued to be largely predominant in India, the hypothesis of a Buddhistical Indian Original of the Talaing and Burmese Codes would gain a great deal in plausibility. The Buddhists might have compiled, from all the then existing Smṛitis, a code for the members of their sect, to which they prefixed the time-hallowed name of Manu, the primeval mythic Legislator of India. It is true that the Buddhists of Ceylon do not possess a Code of Manu, but neither is it probable that the Talaings and Burmese received their laws from the south of India. The references to Benares and Mithilā in the Manu Kyay Dhammathat point to Northern India. These, however, are *res altioris indaginis*, which cannot be discussed satisfactorily before Dr. Forchhammer's new book is before the public.

GENERAL NOTE TO LECTURE VII.

THE LAW OF ADOPTION ACCORDING TO THE DATTAKACIROMANI.

THE Dattakaçiromaṇi is an epitome of seven Treatises on Adoption, arranged in twenty-one Chapters. To facilitate reference, the compiler has generally added a summary at the close of each Chapter. The passages extracted from the Dattakamīmāmsā and Dattakachandrikā lead on every topic. They are frequently accompanied by a commentary. The subjoined version of some of the principal portions of the Dattakaçiromaṇi, and of part of the summaries contained in it, has been prepared with a view to utilize that valuable compilation which was prepared under the judicious patronage of the Founder of the Tagore Law Lectures. Those passages in the Dattakaçiromaṇi which are quoted from the Dattakamīmāmsā and Dattakachandrikā have been omitted, as these works are already accessible in an English form.

CHAPTER II OF THE DATTAKACIROMANI.

Right to adopt a son.

Dattaka-nirnaya.

Dattakanirṇaya.—The rule for giving and taking an (adoptive) son shall be stated next. On this subject, Vasiṣṭha says,[1]—"A son produced of virile seed and uterine blood proceeds from his mother and father (as an effect) from its cause. Both parents have power to give, to sell, and to abandon him. But let him not give or receive (in adoption) an only son. For he (must remain) to continue the line of the ancestors."

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[1] See Professor Bühler's Translation of the Vasishṭha-smṛiti, Sacred Books, XIV, p. 75.

Dattaka-tilaka.

Dattakatilaka.—In the Vyavahāratilaka, Bhavadeva has composed the Dattakatilaka on occasion of the Dattaka son and the rest.[1] On failure of a son, in order to prevent cessation of obsequies, and to continue the line of ancestors, the adoption of a Dattaka son is prescribed in the Kali (age of the world). Vṛiddhabṛihaspati: "Even as oil is declared by virtuous men to be capable of replacing (clarified butter), when a man is about to perform an offering, of the same description are the eleven sons besides the appointed daughter and the son of the body." Vṛiddhaçātātapa: "One sonless should be anxious to adopt a son by all means for the sake of the funeral ball (piṇḍa), water, and funeral rites; and for the preservation of his name." "One sonless," *i. e.*, one destitute of a son; and a male person, because the male gender is used. And thus says Manu: "Those eleven sons who have been enumerated previously,—*viz.*, the son of the wife (kshetraja) and the rest—are mentioned by the wise as substitutes for a son, in order to prevent the cessation of obsequies."

Dattaka-darpana.

Dattakadarpaṇa.—On this subject Atri says: "By a sonless (male) only must a substitute for a son be always adopted anxiously by all means for the sake of the funeral ball, water oblation, and obsequies." The term 'only' is used to denote the incompetency to adopt of one who has a son. The text of Manu, "a son whom the mother or father give during distress (confirming the gift) with water," is interpreted in the same sense by Aparārka, who says, "during distress" means "when the adopter has no son." Or the phrase "during distress" means "during a famine or other calamity." The Mitāksharā[2] says: "This prohibition (under which adoption is unlawful), where no distress exists, is as regards the giver only (not the receiver)." There (in the text of Atri) the term "must be adopted," being a future passive participle, gives rise to four questions: (1) by whom, (2) how qualified, (3) for what purpose, (4) in what manner, shall a son be adopted. "By a sonless (male)" is the answer to the first question. "A substitute for a son," *i.e.*, a Dattaka only, is the answer to the second question. The term 'always' is used in order to exclude a legitimate son and the rest by whom the obsequies are performed for the time being only. The clause "for the sake of the funeral ball, water oblation, and obsequies" contains the answer to the third question. The term "by all means" refers to the performance of the *Homa* and other rites which have the object of converting the adopted son into a Sagotra. The affix *tas*, with which the word *prayatnatas* ("by all means") is formed, is used in order to show that a son should be adopted in every possible manner. This term contains the answer to the fourth question. Çānkha and Likhita say, "Through a son he conquers the worlds; through a son's son he obtains immortality; through a son's grandson he attains the abode of the sun." Sumantu, as quoted in the Chandrikā, says: "Let a son of the body carefully perform the obsequial rites to his departed mother and father, including the recitation of Mantras."

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[1] This introductory stanza shows that Bhavadeva's Dattakatilaka forms a section of a comprehensive work on forensic law called Vyavahāratilaka.

[2] Colebrooke's Mitāksharā, I, 11, § 10.

Dattakakaumudi.

Dattakakaumudī.— . . . . In this matter, the following considerations should be attended to. To design the adoption of a son in general terms as an uncalled for proceeding (in any case) would be unreasonable. There are two texts, of Atri[1] and from the Rāmāyaṇa, from which the existence of other reasons for the adoption of a son (besides those generally stated) may be inferred. (Atri says:) "A man must wish to have many sons, because if only one of them goes to Gayā (for the purpose of offering a Çrāddha to his deceased father), or if he performs a horse-sacrifice, or if he sets a dark-coloured bull at liberty (he will acquire final emancipation through his son)." (The Rāmāyaṇa says:) "A man must wish to have many sons, who are virtuous and well-taught, because there might be one among them all likely to undertake a pilgrimage to Gayā." Thus, supposing even the offering of the funeral ball (piṇḍa) and the water oblation to be duly provided for, the adoption of a son might still be called for in that case, for one of the reasons stated by Atri and the rest. This subtile argument should be taken into consideration. Besides,[2] the author of the Vivādabhangārṇava (Jagannātha) also declares that, in case a Dattaka son should have been adopted, in a valid form, in spite of the existence of a son of the body, a third share of the property should be allotted to him, just as in the case of a son of the body, who was born after the adoption of a Dattaka son. Besides, the following text from a Smṛiti is quoted in Çrīdharasvāmin's Commentary on (certain) verses in the Bhāgavata (Purāṇa): "O King, he gave Ákūti (his daughter, in marriage) to Ruchi, though she had brothers living, relying on the law regarding the appointment of a Putrikā (appointed daughter), in order to please Çatarūpā." This text is intended to show that even where a son of the first class is in existence, a plurality of sons may be produced, at the instigation of a woman desirous of having many sons, in accordance with the text,—"A man must wish to have many sons, because if only one of them goes to Gayā," etc. The term 'nṛipa' ('O King') is the vocative case (of the noun, 'nṛipa' 'a King'), and refers to King Parīkshit. If it is read with a *visarga* at the end (nṛipah), it is (a noun in the nominative case) expressing the agency of Manu Svāyambhuva (the father of Ákūti). The term 'Ákūtim' is a noun in the accusative case, containing the name of (Manu's) daughter. The term 'Ruchi' is a noun in the dative case, containing the name of Prajāpati, the son of Brahman. The phrase "though she had brothers living," means "though her two brothers, the Kings Priyavrata and Uttānapāda, were then in existence." Çatarūpā was the wife of Manu.

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[1] This text occurs in the Institutes of Vishṇu. See the Author's translation in the Sacred Books of the East, VII, p. 260.

[2] The drift of what follows here is this, that the appointment of a Putrikā, in spite of the existence of one or several sons, being a legal practice, and confirmed by a precedent from sacred history, the analogous practice of adopting a son, where legitimate sons are living, is equally legal. The Vivādabhangārṇava is the Digest translated by Colebrooke.

Dattaka-didhiti.

Dattakadīdhiti.—Çaunaka declares that a daughter's son and a sister's son may be adopted by a Çūdra. The adoption of a son, as prescribed in the text (of Çaunaka), "A daughter's son and a sister's son even are adopted by Çūdras," may be undertaken by women having husbands, as well as by men. For Çaunaka says expressly,—"a barren woman, or one whose son has died, having fasted for a son." Some, however, declare that, on account of the term 'only' and of the male gender being used in the text (of Atri), "By a sonless (male) only must a son be always adopted," a woman is not entitled to adopt a son without the sanction of her husband, in accordance with the text of Vasishṭha,—"Let a woman neither give nor receive a son, except with her husband's permission." That is improper. . . . .

Dattaka-siddhánta-manjari.

Dattakasiddhāntamanjarī (according to the Summary at the end of Chapter II). In the Manjarī, the adoption of a brother's son is declared necessary, and the adoption of a different person prohibited (where a brother's son is available). The filiation of a plurality of sons is approved of, with a view to adoption being both a universally binding duty and a specially meritorious proceeding.

CHAPTER III.

Adoption of a son by a woman with her husband's permission.

Dattaka-nirnaya.

Dattakanirṇaya.— . . . . Giving or taking a son in adoption is illegal in a woman, unless her husband give his consent to it.

Dattaka-tilaka.

Dattakatilaka.—Thus in the text, "If amongst many women, the wives of a single husband, one should have a son, Manu has declared them all mothers of a son through that son," the term "a single husband" means "the same husband." If amongst several wives of one and the same husband, one should have a son, his other wives are declared mothers of a son through that very son. Therefore they (the other wives) are not entitled to adopt a son, though the husband may have given them permission to do so through love, or from another motive, because a permission given by a man having no son is not worth anything, according to the text, "one sonless should be anxious to adopt a son by all means, for the sake of the funeral ball (piṇḍa), water, and funeral rites, and for the preservation of his name." By "one sonless," *i.e.*, by a male destitute of the likeness of a son. Not by a woman, because she may neither give nor receive (a son in adoption), as stated by Vasishṭha—"Man formed of virile seed and uterine blood proceeds from his mother and his father (as an effect from its cause). (Therefore) both parents have power to give, to sell, and to abandon him. Let him not give or receive (in adoption) an only son. For he (must remain) to continue the line of the ancestors. Let a woman neither give nor receive a son except with her husband's permission." The right of a woman to adopt with her husband's permission is secondary only; . . . . . and it must not be said: The mother also has full power to give or receive a son, on failure of the father, because the text "both parents have power" contains the

Dvandva (copulative) compound (mātāpitarau 'both parents'), and because it is said, "Whom his mother or father give," etc. (Manu, IX. 168), and because each of the two component parts of a Dvandva compound is significant by itself. This objection cannot be maintained in the face of the rule that the husband's permission is required. Again, if it be said that here also the equality of rights between both parents is established, the prohibitive rule, "Let a woman neither give nor receive a son," would be unmeaning, the female sex being in every way dependent on the male sex, because they must never be independent. And thus says Hārīta: "In regard to a wife, in regard to wealth, and especially in regard to the sacred law, a woman does not deserve independence neither in taking nor in abandoning." Nārada: "Transactions made by a woman are null and void, except during distress, especially if they relate to the gift, mortgaging, or sale of a house or field. Such transactions acquire validity in that case only, if the husband approves of them; or, on failure of the husband, the son; or, on failure of both husband and son, the King." The term "during distress" is used (in the text of Nārada), in order to indicate that a gift or other transaction made by a woman, for the purpose of obviating distress, is valid. Therefore, a woman even may give in adoption, and completely relinquish her dominion over a son in times of distress. But she may not receive him (in adoption), because the Dvandva compound, etc., is used with reference to the gift only of a son. Therefore, both parents have power to give, sell, or abandon—from passion or some other motive—their son, who is formed of virile seed and uterine blood, and has proceeded from them (as an effect) from its cause. But they are not (invested with equal power) as regards the acceptance (of a son). Although, therefore, a son owes his existence to his mother, she cannot be permitted to adopt a son independently (of her husband), because she is not allowed to give a son in adoption during the lifetime of her husband. Therefore, supposing even a man were anxious to give in adoption his only son, the representative of his race, a woman is not allowed to receive him in adoption. . . . . .

Dattaka-darpana.

Dattakadarpaṇa.—The adoption of a substitute for a son should be undertaken by females as well as by males. If it be objected that the incapacity of women to give or receive a son in adoption is shown by the text of Vasishṭha, "Let a woman neither give nor receive a son," (the reply is)—No. The incapacity of women to give or receive a son might be twofold: owing to their incapacity to recite the Mantras customary on the gift or acceptance of an adoptive son; or owing to the want of the husband's consent. The first reason is not to the purpose, because a woman, after having merely declared her intention to adopt, might cause the Homa and all the other ceremonies to be performed by a spiritual guide. Where the person to be adopted is a closely related Sapiṇḍa or Sagotra, there is no impropriety of any sort, because it is ruled that the Homa and the other ceremonies may be dispensed with in that case. . . . . Nor is the second reason correct, because Vasishṭha recognizes a right to adopt in women as well (as in men), as he says—"without the husband's permission." For Vasishṭha does not speak of that incapacity of a woman which is caused by her incapacity to recite Mantras, but of that incapacity only which is connected with the want of the husband's consent. . . . . In accordance with the text—"The father protects her during infancy; the husband protects her when she is grown up; the son protects her in her old age: a woman is never fit to be independent"—women whose husbands are living have power to give or take (a son in adoption), not independently however, but with the sanction of their husband only. Widows, on the other hand, who are destitute of the three, beginning with the son (*i. e.*, son, husband, father), possess an entirely uncontrolled and independent power of giving and taking (in adoption). Only the widow's right of adoption must be held to be confined to the widow of one divided in estate (from his brothers or other coparceners). This is because mutually conflicting texts of law are found, such as, *e. g.*, the following: "The wife is heir to her husband's wealth; on failure of her, the daughter is stated to inherit; on failure of her, the daughter's son;"—and "The wife, the daughters, the parents, the brothers, their sons, Gotrajas (gentiles), a Bandhu (cognate), a pupil, and a fellow-student"—and "If among all sons of one man," etc.[1] Of an uncle who has no son, the son of his brother is considered as such.

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[1] The whole text runs as follows:—"If among all the several sons of one man, one should have a son born, Manu pronounces them all fathers of a male child through that son." See Manu, IX, 182.

In the case of one divided in estate, his wife (inherits his property); on failure of her, his daughter; on failure of her, the daughter's son. For Yājnavalkya says: "The son of the body (Aurasa) is he who was begotten on a legitimate wife. The son of the appointed daughter is equal to him." If it be objected: How is it that the son of the appointed daughter, though equal to the son of the body (Aurasa), is inserted after the daughter? The answer is: True. However, a prior right of succession belongs to that son of a daughter only, who has been appointed (heir to his grandfather), but not to one unappointed. Thus his insertion after the daughter is quite proper. In the case of one joint in estate (with his brothers or other coparceners), the right of succession belongs to the wife, under the text of Manu, "A wife, having no son, who is faithful to the bed of her lord, shall give the funeral ball to him, and shall take his whole share of the estate." Through the wife (*i. e.* after her), the inheritance shall devolve on the daughter and on the daughter's son. The phrase "one who has no son" means precisely "one who has no son" only, and not "one who has no Sapiṇdas." Therefore, though Sapiṇdas may be in existence, the wife alone inherits; but in the case of one joint in estate, the inheritance belongs to the brothers and the rest. Thus the law has been declared by the compilers of works (on law), in order to reconcile conflicting texts. Therefore it is established that women are invested with the right to adopt.

Dattaka-kaumudi.

Dattakakaumudī.— . . . "Let a woman neither give nor receive a son except with her husband's permission." The true import of this text (of Vasishṭha) is as follows: As, under the text, "If, among all the wives of one husband, one should bring forth a son, etc." (Manu, IX., 183), the Çrāddhas and other duties incumbent on a son may be performed by the son of a rival wife, the adoption of a son by such a one is not permitted, because the rites performed by him benefit both. For, as regards his filial relation to the husband, he is his legitimate and principal son; and as regards the wife, he is her secondary son, just as an adopted son. Therefore such a woman is not allowed to adopt another son without the husband's permission. Thus writes Mitramiçra (the author of the Vīramitrodaya). Therefore, a woman may adopt a secondary son by permission of her husband, though the latter has a son by another wife. Thus, according to this view, the adoption of a further secondary son, where a son of the body or a secondary son is already in existence, is valid. This should be known.

Dattaka-dīdhiti.

Dattakadīdhiti (according to the Summary at the close of Chapter III). The author of the Dattakadīdhiti declares that women having husbands are allowed to adopt a son by permission of their husbands. A widow may adopt, if she has received permission to do so from her husband during the lifetime of the latter.

Dattaka-siddhānta-manjarī.

Dattakasiddhāntamanjarī.—The Datta and the other substitutes for a son, who have brothers living, and are not the eldest of the family, should be known to be incapable of being adopted by women who have not received permission to do so from their husbands, because Çaunaka says,—"By no man having an only son should the gift of that son ever be made. One having many sons should make the gift of a son by all means." Besides, another Smṛiti declares,—"Let him not give an eldest son;" and (a third Smṛiti says):—"Let not a woman give a son," and further: "But let him not give or receive (in adoption) an only son. For he must remain to continue the line of ancestors." Finally, Vasishṭha declares,—"Let a woman neither give nor receive a son except with her husband's permission." From this prohibitory text, the right of a woman even to adopt, if she has received permission to do so from her husband, may be inferred. Therefore, in the above injunction, "By no man (having an only son should the gift of that son ever be made)," no stress has to be laid on the reference to the male sex of the adopter. . . .

CHAPTER IV.

Restrictions in regard to adoption.

Dattaka-kaumudī.

Dattakakaumudī.— . . . Now about persons fit to be adopted. A Dattaka who is a uterine brother's son; a Dattaka who is a Sapiṇḍa; a Dattaka from the maternal grandfather's family; a Dattaka who is a Sakulya; one who is a Samānodaka; and one who is a Sagotra: each of these has to be considered eligible on failure of the one preceding in order, with reference to closeness of relationship. This rule has been declared in the Dattakadīdhiti, Dattakachandrikā, Dattakamīmāmsā and other works, as being the upshot of the discussions kept up in many a learned assembly. Anantabhaṭṭa declares that a brother, a paternal uncle, and a maternal uncle form an exception to this rule, because they are unfit to be regarded as sons, as being related to the adopter in a prohibited degree. The meaning is, that a sister's son and a daughter's son are excepted, because they are related in a prohibited degree. A brother, a paternal uncle, and a maternal uncle cannot be viewed in the light of a son.

Dattaka-kaumudí, according to the Summary.

The Dattakakaumudí on persons unfit to be adopted.

Dattakakaumudī (according to the Summary at the close of Chapter IV). The author of the Dattakakaumudī, endorsing the opinions of a large number of writers, declares, after a great deal of deliberation, that a secondary son may be adopted from a desire to have many sons, though a son of the body be in existence; and that, where one secondary son is in existence, another secondary son may be legally adopted. Where, however, one of the two motives—a desire to have many sons, and the attainment of a certain (blissful) abode in a future state—is absent, the adoption of another son is hardly called for. One on whom the ceremony of initiation has been performed is nevertheless fit to be adopted as a son. Such a son is a Dvyāmushyāyaṇa, or Dvipitṛika (son of two fathers), if an agreement has been entered into, to the effect that he shall be regarded as son both to his natural and adoptive parents. However, an uninitiated person is fitter to be adopted than one initiated. A uterine sister cannot adopt the son of her uterine sister. A uterine brother should not adopt the son of his uterine sister. (All) persons related (to the adopter) in a prohibited degree, especially a daughter's son, a sister's son, a paternal uncle, and the son of a mother's sister, must not be adopted as sons. Nor can two or three together adopt a single person. This also is written (in the Dattakakaumudī).

Dattaka-dídhiti: 1, persons unfit to be adopted; 2, half-blood; 3, adoption of one son by a number of men; 5, question as to the performance of ceremonies on the

Dattakadīdhiti (according to the Summary). The same opinion is delivered in the *Dattakadīdhiti.* Besides, it is asserted in that work that one belonging, *e.g.*, to the Gurjara tribe (the people of Guzerat) can only adopt one of his own tribe. He cannot adopt a Telinga, or a Bengali, or a Kalinga. In the same way, persons belonging to one Vedic clan, such as, *e.g.*, Vārīya or Vārendra Brahmans, must not adopt one belonging to a different tribe. Where a son of a Sapiṇḍa relation is in existence, the stepson of a sister cannot be adopted. He can only be adopted on failure of a Sapiṇḍa. In the text of Atri (Manu IX. 182) "Among several brothers, the sons of one man," the term "a son" means "a son of the body" (Aurasa). Therefore, several men together even can adopt a single son, just as Draupadī was married (to several brothers). One of the rituals prescribed for the ceremony of adoption, whether the one stated by Çaunaka, or the one stated by Vasishṭha, or another, should be performed even in the case of the adoption of a brother's son. If this were not (the proper thing to do), there would be an end of the twelve sorts of sons, and he (the adopted son) would not be mentioned as the fifth (of the sons).

adoption of a brother's son.

The *Dattakasiddhāntamanjarī* — (Summary) states, that the adoption ritual should be performed in the case of a brother's son as well (as in other cases). In deference both to universally binding rules of law, and special precepts, even a plurality of (adopted) sons is legal. Their number must be restricted to three; there would be no end of them otherwise. Women cannot adopt without the sanction of their husbands, because the term "by a sonless (male," in the leading text on adoption) is in the male gender. In the text "One of the same Jāti should be adopted," equality of Jāti means equality of descent, not equality of caste, as *e.g.* both being members of the Brahman caste. This interpretation has the inevitable consequence, that a native of Guzerat might thus be adopted by a Mahratta, which is against the best authority. The Datta and other (adopted sons) are fit to be adopted from their birth up to the date of their marriage—this is the law; but not after their marriage. This is ordained in the Kālikā-purāṇa. Those adopted before initiation are preferable for that reason (to those adopted after initiation). The age up to five years is the fittest of all. The years after that are not equally good. Thus says the Dattakasiddhāntamanjarī.

Dattaka-siddhánta-manjari: 1, adoption of a brother's son; 2, plurality of sons; 3, women cannot adopt without husband's consent; 4, equality of Játi; 5, restriction as to age.

Dattakanirṇaya — (Summary) prohibits the adoption, by Brahmans and the rest, of a daughter's son and of a sister's son. It prohibits, likewise, the gift and acceptance of an only son. However, (the prohibition of) the gift of an only son is mentioned as an esoteric doctrine only; it does not mean that such a gift is invalid. The acceptance (of an only son) is unimpeachable, because it has nothing to do with esoteric doctrines. The gift or acceptance of a son by a woman, without the consent of her husband, is invalid. The gift or acceptance of an eldest son is void, because it is incumbent on that son, before any one else,

Dattaka-nirnaya: 1, adoption of a daughter's son and of a sister's son; 2, of an only son; 3, without consent of husband; 4, of an eldest son.

5, formalities necessary; 6, restrictions as to age.

to perform the funeral rites addressed to his father and other ancestors. On the adoption of a son, the ritual prescribed by Çaunaka and others must needs be performed. The Homa should be offered by a woman also, according to law, through the mediation of a Brahman. Sonship may be produced, even without the Homa ceremony and other rites being performed. Where the ceremony (of initiation and the other rites, beginning with the tonsure rite) do not take place, sonship is inevitably annulled. A boy more than five years old must not be adopted. Should he have been adopted, his sonship is not valid at law. On the adoption of one more than five years old, a householder who maintains a sacred fire must perform the ceremony of Putreshṭi. If he does not maintain a sacred fire, sonship may be effected by the ceremony of initiation, etc., (performed in the adoptive father's family) alone.

Dattakatilaka: 1, where a brother's son cannot be adopted; 2, where a sonless wife cannot adopt; 3, adoption by a woman;

Dattakatilaka (Summary).—A man who has not the likeness of a son may adopt a secondary son. If the heirs up to the brother (*viz.*, the wife, daughters, parents, brothers) are wanting, and a brother's son is in existence, adoption cannot take place, because all duties and rights (attaching to a son) devolve on the brother's son (in that case). Where one wife has a son, all the rival wives, though sonless, will doubtless become mothers as well (through that son). A sonless wife cannot adopt a son in that case, even though her husband should consent to it, a consent which is contrary to the sacred law being invalid. In cases of distress, an adoption made by a woman is valid; but she cannot give in adoption (in cases of distress).

4, adoption of several sons; 5, Nándímukha Cráddhas; 6, householders alone capable of adopting; 7, the son of the body and the adopted son; 8, adopted son inherits; 9, formalities un-

Where many sons are adopted, at the desire of a single man, by a single act, it is a valid transaction. Where, however, each has been adopted by a separate act, the adoption is invalid. The performance of a Nāndīmukha Çrāddha previous to the act of acceptance is improper, because there is no authority for it. Householders alone may adopt sons according to custom, and not the three other orders (of pupil, hermit, and ascetic). Thus far the Tilaka. The following further rules are also contained in the Tilaka. In the (present) Kali age of the world, the son of the body and the adopted son are the only two recognized species of sons. On failure of sons, grandsons, and great grandsons, an adopted son is declared heir to the property. In the case of Sapiṇḍa and Sagotra relations, beginning with a brother's son, adoption acquires validity through a mere verbal agreement, without Homa and the other ceremonies being performed. In the adoption of a Sapiṇḍa or Sagotra relation, there is no restriction as to age. A married man even is fit to be adopted. The restriction as to age, as stated in the Kālikā-purāṇa, refers to adopted sons other than Sagotras. After having attained the age of five years, those only can be given in adoption who wish it. They cannot be adopted against their wish.

necessary in adopting a relation; 10, restrictions as to age.

SUMMARY OF CHAPTER V.

Who can give in adoption.

Dattakanirṇaya.—Not to give an only son in adoption, excepting the eldest son, is an esoteric doctrine, but the gift is not invalid. The gift of an eldest son, no matter whether the giver has one or several sons, is invalid. Thus it is ordained in the Dattakanirṇaya.

Dattaka-nirnaya. Adoption of an only son and of an eldest son.

Dattakatilaka.—Where a son by a rival wife is in existence, a woman is not entitled to adopt a son. Nor is it lawful for a man to adopt another substitute for a son where there is already one substitute for a son. Wise men do not consider as legal any transaction of a woman, except in cases of distress. In particular, in deference to a text of Nārada, they do not attach legal force to transactions of gift, hypothecation, and sale (on the part of a woman), which have reference to houses or fields, though their ownership (of the objects in question) be undeniable. In order to obviate a calamity, a woman is entitled to give a son in adoption, even without the approval of her husband and the rest, though she may not adopt a son (on the same ground); both having equal power over the son, under a text of Vasishṭha. A number of sons even may be adopted with one act, one preferring his own independence being incapable of being adopted. This is what the Dattakatilaka says.

Dattaka-tilaka: 1, adoption of a son where there is already an adopted son; 2, transactions of women invalid; 3, a woman may give in adoption, but she cannot adopt; 4, adoption of a number of sons.

Dattakadarpaṇa.—A woman may legally adopt a son, just like a man. In that case, the Homa and all the other ceremonies have to be performed by an Áchārya (spiritual guide) selected for the purpose. There is no impropriety of any sort in the adoption of a Sapiṇḍa relation. In that case, the Homa may be dispensed with, and sonship may be effected by a mere verbal agreement. If women were to

Dattaka-darpana: 1, adoption by a woman; 2, omission of ceremonies; 3, consent of the husband; 4, widow may adopt.

be deprived of the right to adopt, on account of their incapacity to perform Homa, the consequence of the rule regarding permission to adopt being rendered nugatory, could hardly be avoided. A woman whose husband is living is dependent on her husband, and is incapable of adopting on account of this want of independence. A widow is perfectly at liberty to adopt a son, as she is deprived of her husband.

Dattaka-kaumudí: 1, adoption by a woman; 2, gift of an only son, and of an eldest son; 3, adoption by a Cúdra; 4, widows have no right to adopt.

Dattakakaumudī.—The gift (of a son), if made by the husband without the consent of his wife, is valid. The gift (of a son) by the wife, without the sanction of the husband, is invalid. A man is entitled to give his son in adoption without the consent of his wife. A wife cannot give in adoption without the consent of her husband. The Dattakakaumudī observes further, that the use of the negative particle implies prohibition. (This particle occurring in texts relating to the adoption of an only son, and of an eldest son, it follows that) the gift of a single son, and the gift of an eldest son by one who has several sons, is forbidden. Çūdras are entitled to adopt even a daughter's son and a sister's son. Women whose husbands are living can adopt a son just like men. Widows have no right to adopt. This also is stated by the author of the Kaumudī.

Dattaka-siddhánta-manjarí.

Dattakasiddhāntamanjarī. — The Dattakasiddhāntamanjarī contends that any but the eldest son of a man having one son (*sic.*) or several sons, may be given in adoption by his mother, even without the sanction of her husband.[1]

SUMMARY OF CHAPTER VI.

How many kinds of substitute sons are recognized in the present age of the world.

Dattaka-mimámsá.

In the (present) Kali age of the world, the son of the body (Aurasa), the Dattaka, and the Kritrima are the only recognized sorts of sons, under a text of Parāçara. This opinion is delivered in the *Dattakamīmāmsā.*

Dattaka-chandriká.

The *Dattakachandrikā,* on the other hand, recognizes the Aurasa and Dattaka sons only. The latter opinion is embraced by the inhabitants of Bengal. The Westerners adhere to the doctrine of the Dattakamīmāmsā. The *Dattakanirṇaya* does not say anything about this matter.

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[1] The views of the compiler of the Dattakasiddhāntamanjarī have not been represented correctly in this place. What he really says is, that the husband's consent is indispensable. See pp. 37, 128, of the Dattakaçiromaṇi. In the Summary of Chapter IV, the doctrine of the Manjarī has been given correctly.

Dattaka-tilaka.

The *Dattakatilaka* declares that, in the Kali age of the world, no other son can be adopted on failure of a son of the body than a Dattaka. Under texts from the Ádityapurāṇa and from the Brihaspati-smṛiti, that text which refers the adopted son among the latter six substitutes for a real son, must be held to be applicable to another age of the world. That rule which refers the Dattaka among the first six substitutes for a son should be observed, as being applicable to the present age of the world. This also is declared in the Tilaka.

Dattaka-darpana.

Dattakadarpaṇa.[1]—Though the term 'a son' refers to the son of twelve kinds in this place, yet the son of the body (Aurasa) and the Dattaka only can be meant, because sons other than a son of the body (Aurasa) and a Dattaka are not permitted in the (present) Kali age of the world. Therefore, one who has no son of the body by a legitimate wife should not adopt any other than a Dattaka son. It is true that Yājnavalkya declares the Putrikāputra (son of an appointed daughter) equal to the Aurasa, in the text: "He is called Aurasa who has been begotten on a legitimate wife. A Putrikāputra is equal to him." It is equally true that Bṛihaspati declares (the Putrikāputra) equal to a grandson, in the text "A son's son and the son of an appointed daughter are both capable of conveying a man to paradise. They are declared equal both as regards the right of inheritance and the duty to offer funeral oblations (to the deceased ancestor)." Nevertheless, this alleged equality denotes a slight degree of inferiority, just as in the saying "a minister is equal to a King in the world." The Smritisaugraha, too, says—"The son, the grandson, the great-grandson, and the Putrikāputra only." The result is, that the following series should be established: On failure of a son of the body, the grandson; on failure of him, the great grandson; on failure of him, the Putrikāputra; on failure of him, the Dattaka.

Dattaka-kaumudi:

Dattakakaumudī.[2]—It is certain that the secondary sons

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[1] This portion of the Dattakadarpaṇa is given in full, according to Dattakaçiromaṇi, p. 131, because the Summary of Chapter VI does not contain any extract from the Dattakadarpaṇa.

[2] This portion of the Dattakakaumudī is given in full for the same reason as the corresponding portion of the Dattakadarpaṇa.

1, Secondary sons are substitutes for a son of the body.

An objection refuted.

2, Kritrima sons recognized.

3, several other kinds of sonship recognized in the Vivádatandava.

are substitutes for a son of the body, under the text (of Atri)—"By a sonless (male) only must a substitute for a son be always adopted," under the text (of Manu)—"The son of the wife (Kshetraja), and those other sons whom we have enumerated are called substitutes for a son," and under other texts. The Vaijayantī, it is true, contains the following text of Satyāshāḍha: "There is no substitute for mastership, a wife, a son, a country, a time, fire, a divinity, an act, or a word." This text, however, must be explained in conformity with the other text—"There is no other kind of sonship than the sonship of a Datta and of an Aurasa;" and it must be taken to mean that a son of the wife (Kshetraja) or one of the other forbidden secondary sons must not be substituted for a son of the body in the present (Kali) age of the world. In the opinion of Nandapaṇḍita (see Dattakamīmāmsā, II, 65), a son of the body (Aurasa), a Dattaka, and a Kṛitrima are the (three) kinds of sons recognized in the (present) Kali age of the world. In the text "There is no other kind of sonship than the sonship of a Datta and of an Aurasa," it is necessary to supply the words "recognized in the (present) Kali age of the world," because that text occurs in an enumeration of things prohibited in the (present) Kali age of the world. In the same text the term 'Datta' is meant to include a Kṛitrima son as well, because the Parāçara-smṛiti, in the section on the laws of the Kali age, says, "a son of the body (Aurasa), a son of the wife (Kshetraja), a Datta, and Kṛitrima son." The term 'Kshetraja,' in this text, refers to a certain species of Aurasa sons. Manu says on this subject: "One begotten by a man himself on his own wedded wife should be known to be an Aurasa son." The author of the Vivādatāṇḍava (Kamalākara), on the other hand, declares: "Though other sons (than an Aurasa and a Dattaka) are prohibited in the present age of the world, under the following text from Ādityapurāṇa as quoted by Hemādri, "There is no other kind of sonship than the sonship of the Datta and of the Aurasa;" yet, the sons bought, self-given, and Kṛitrima being similar to the Datta, it follows that they also are recognized in the (present) Kali age of the world. This is sufficient.

Dattakadidhiti.

Dattakadīdhiti.—In the opinion of the compiler of the Dattakadīdhiti no other than a Dattaka son can be adopted in the present age of the world. There is not any other kind of substitute son. Therefore the case of the Dattaka son alone is discussed in that book.

The contents of Chapter VII are not correctly stated in the Summary. The extracts contained in Chapter VII are partly unimportant, and partly repeated from previous Chapters.

Chapter VIII.

Whether one belonging to a different caste may be adopted or not.

Dattaka-nirṇaya.

Dattakanirṇaya.—However, venerable persons should devise a mode of reconciling these difficulties. In conformity with the rule, "Where revealed texts, or texts from the law-books, are at variance among themselves, the matter must be left undecided. If, however, revealed texts should be found at variance with Smṛiti texts, the revealed texts must be held decisive." The texts of Manu and the rest must be held applicable to a Dattaka of the first class, and to a Dattaka of the same caste who has been adopted by a male. This is in accordance with the text of Manu—"One similar (in caste) and affectionately disposed (towards the adopting parent): he is called a Datrima (adopted) son." The texts of Çankha and the rest, on the other hand, have reference to adopted sons of a different caste, and to those adopted by a female only; because Yājnavalkya does not draw any distinction between sons equal and unequal in caste, in the text—"He whom his father or mother give in adoption is a Dattaka son."

Dattaka-tilaka.

Dattakatilaka.—And he is a Dattaka of the first class if he belongs to the same caste as the adopting parent. One belonging to a different caste cannot be a substitute for a son, because he is not allowed to perform the funeral rites (for his adoptive father).

Dattaka-darpaṇa.

Dattakadarpaṇa.—Therefore, though the wife or other relations be in existence, every one should be anxious to adopt a substitute for a son. A Brahman may even adopt one who is no Sapiṇḍa of his. A fellow caste man can only adopt another member of the same caste, because it is stated in the text of Çaunaka—"Otherwise let him not adopt." The Dattaka is four-fold: a Sagotra Sapiṇḍa; on failure of him, a Sagotra who is no Sapiṇḍa; on failure of him, a Sapiṇḍa who is no Sagotra. Among the Sagotra Sapiṇḍas, again, a brother's son is preferable on account of his proximity (to the deceased). On failure of him, any one of the other closely related Sagotra Sapiṇḍas (may be selected). Among these, a brother and a father should be avoided, because they are unfit to be regarded as sons.

Dattaka-kaumudi. 1, adoption not a necessary act.

Dattakakaumudī.—The term "perpetuation of the name" means propagation of one's own race in the ascending and descending lines. Thus the perpetuation of the name is equally meritorious as, but it is not a more powerful motive for the adoption of a son than the other motive, or the continuation of one's own lineage, under the text of Brihad Yājnavalkya, "Let a member of the same caste be adopted as a son, who shall offer the funeral ball to, and inherit the property of, his adopting father. On failure of such, let one of a different caste be adopted, in order to continue the lineage." This act (of adoption), however, is productive of advantage in this world only, and not in a future state as well. Therefore, it is not an indispensable act of duty. Therefore adoption cannot take place for that reason, because it is an indispensable and regular act of duty. For if a man were a sinner, merely because he has failed to perpetuate his name, it would follow that the adoption of a son for that purpose must be an indispensable act of duty. This, however, is not the case, because there is no rule of law to that effect, the adoption of a son not being necessary except on failure of male issue. For, in the text of Manu, "By a sonless (male) only must a substitute for a son be always adopted," the word 'always' is used in reference to those cases only where a son is wanting. Besides, perpetuation of one's name may be effected by other means also, as *e. g.* by building a large dyke.

2, right of inheritance and claim to maintenance.

This (right of inheritance of an adopted son) must be held to accrue in the whole estate of the (adoptive) father, grandfather, etc. Those texts under which food and raiment only is allotted to the Dattaka and the rest must be considered to have reference to a Dattaka belonging to a different caste (than the adoptive parent), and to a Dattaka who is incapable of performing daily or occasional acts of worship. The Mitāksharā and other works agree in reconciling in this way the conflicting propositions contained in the ancient texts. Thus has the law been briefly declared.

Dattaka-dīdhiti.

Dattakadīdhiti.—The rule that one belonging to the same caste only may be adopted follows from the previously quoted text of Çaunaka—"Otherwise let him not adopt." It may be inferred, equally, from the text, "Let a Brahman nourish another Brahman. Let not a son be taken in adoption, who is of different origin." And thus says Çaunaka: "Among Kshatriyas, a member of their own caste, or one belonging to the same Gotra as their Guru; among Vaiçyas, from among the members of the Vaiçya caste; among Çūdras, from among the members of the Çūdra caste. Among all tribes, from among the members of the same tribe only, and not from others." The restriction of adoption to members of the same caste (Varṇa) being established, and "members of the same tribe and not from others" specially prescribed, it follows that the latter clause must be referred to members of the same nation, as for instance of the people of Guzerat. It is intended to show (besides) that a Dattaka to be adopted by a Kshatriya should belong to the same Gotra (as his adoptive parent).

Dattaka-siddhánta-manjari.

Dattakasiddhāntamanjarī.—This entire Law of Adoption is applicable in the case of caste-fellows only. The term "a caste-fellow" denotes one who happens to belong to the same community, and not one belonging to the same class, as *e. g.* to the class of Brahmans. If that were meant, persons belonging to the identical caste of Brahmans, &c., but to different tribes, such as *e. g.* the people of Guzerat, might mutually adopt one another, which would be contrary to established usage. It should be known, moreover, that a daughter's son and a sister's son, and those unfit to be regarded as sons,—*i. e.*, a paternal uncle and other such relations—are ineligible for adoption among Brahmans. Among Kshatriyas, one belonging to the same family as one's Guru (is eligible also). Among Vaiçyas and Çūdras, members of the same caste only (are eligible). This has been stated by Çaunaka as follows: "Amongst Brahmans, the boy to be adopted should be chosen from among the Sapiṇḍas; or, on failure of them, from among those relatives who are no Sapiṇḍas; otherwise let him not adopt. Amongst Kshatriyas, a member of their own caste, or one whose Gotra is the same as that of the Gotra's Guru (may be adopted). Among Vaiçyas, from among the members of the Vaiçya caste. Amongst Çūdras, from among the members of the Çūdra caste. Amongst all castes, from among the members of the same caste only, and not from others. Among Çūdras, it is even permitted to adopt a daughter's son or a sister's son. Among the three (higher) castes beginning with the Brahman caste, a sister's son can never be adopted."

CHAPTER IX.

Rules for the adoption of a Dvyāmushyāyaṇa son.

The Dattakanirṇaya, Dattakatilaka, and Dattakadarpaṇa are silent on this subject.

Dattaka-kaumudi.

Dattakakaumudī.— . . . A son for whom the ceremonies up to the rite of tonsure, inclusive, have been performed by his natural father, is not merely the son of his progenitor, but he enters into filial relation to the other (the adoptive parent) as well, if an agreement has been made in this form—" This son shall belong to both of you." And thus he becomes a Dvyāmushyāyaṇa. That is the meaning.

Dattaka-didhiti.

Dattakadīdhiti.— . . . One for whom the ceremonies up to the tonsure rite, inclusive, have been performed in the family of his natural father, does not pass into the status of a (real) son to another, though he becomes the (adopted) son of his adoptive father. He is a Dvyāmushyāyaṇa, or member of two families.

Dattaka-siddhánta-manjari.

Dattakasiddhāntamanjarī.— . . . A son for whom the ceremonies up to the tonsure rite, inclusive, have been performed in the family of his natural father, does not become the son of another,—*i.e.*, of the adopter, but the son of both (his natural and adoptive fathers), because he acquires the status of a Dvyāmushyāyaṇa son. Therefore it should be known that those for whom the ceremonies from the date of birth up to the tonsure rite exclusive (only) have been performed in their natural father's family are preferable (to other adopted sons), because they are the sons of one man only.

The Datta and the other (adopted sons) are of two kinds: those who are not Dvyāmushyāyaṇas, and those who are. Those who are not Dvyāmushyāyaṇas belong to one family only. The Dvyāmushyāyaṇas belong to two families. The Dvyāmushyāyaṇas again are of two kinds: those who belong to the same race as the adopter, and those belonging to a different race. Those for whom the ceremonies of Jātakarman (birth-ceremony) and so forth, or the ceremonies of tonsure and so forth, have been performed (by the adopting parent), belong to the family of the adopter only. They are the first of all. Therefore they have no right of succession in the family of their natural father. This has been stated by Manu as follows: "A son given (Datrima) does not succeed to the Gotra and estate of his progenitor. The funeral ball follows the

Gotra and the estate. The funeral oblation recedes from him who gave (his son in adoption)." The adopted son who belongs to the family of the adopter only will be explained further on through the text of Bṛihanmanu on Sapiṇḍas, which will be quoted afterwards. And thus, in all questions regarding marriage (*i.e.*, prohibited degrees of relationship in marriage) and so forth, the family of the adopting parent only has to be taken into consideration. Thus far as regards the family of the first (kind of adopted son)."[1] Those for whom the ceremony of initiation, or of marriage, has been performed by the adopter, belong to the families of their progenitor and of the adopting parent. They represent the second class (of adopted sons). They therefore are entitled to succeed to the property of the Sapiṇḍas and Sagotras of their progenitor, on failure of other nearer heirs. This has been proclaimed by Manu as follows: "The son of the body, the son of the wife (Kshetraja), the Datta, the Kṛitrima, one begotten in secret, and one cast off, are the six sons who are both heirs and Bāndhavas (related to their father)." Though, as regards sons belonging to two families, a son bought, the son of a twice-married woman, and one self-given, might also be considered to have a right to succeed (in both families), in case they are Dvyāmushyāyaṇas, still it must be known that (these kinds of sonship) are evidently prohibited, under the text (of Manu): "The son of a damsel, one obtained through marriage with a pregnant woman, one bought, the son of a twice-married woman, a son self-given, and the son of a Çūdra woman, are the six sons who are Bāndhavas (related to their father), but not heirs." If, therefore, they should marry, it is necessary to look to the two families (of their natural and adoptive fathers). This has been stated in the Pārijāta (as follows): "The Dattaka, the son bought, and others, who are mentioned as Dvyāmushyāyaṇas in certain Smṛiti texts, are subject to the prohibitions regarding marriage, in both families, as was the case of Çringa and Çaiçira." This must be held to be the law in regard to the Datta and the rest, whose position as Dvyāmushyāyaṇas has been declared. Thus far as regards the family of the second (kind of adopted son). . . .

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[1] Read prathamānām in the text.

Chapter X treats of the question whether the son of a woman twice-married and the son of a slave (Dāsa) may be adopted or not.

Summary of Chapter XI.

In what case is it proper to adopt a son.

Dattaka-mímámsá.

In all castes, including the mixed castes even, one less than five years old only may be adopted as a son. There, one for whom the ceremonies of Jātakarman and the rest have not yet been performed, is an adopted son of the first class. One for whom the tonsure rite only has not yet been performed, is an adopted son of the second class. By the mere performance of the ceremony of initiation (in the adoptive father's family) he becomes a son. The adoption of one for whom the tonsure rite has been performed (in his natural family) produces slavery, and not sonship, except through the ceremony of Putreshṭi. Slavery is likewise produced if those for whom the ceremonies of Jātakarman and the rest have not yet been performed, should not have these ceremonies performed for them in their adoptive father's family. One adopted after completion of his fifth year also becomes a slave, and not a son, though the ceremony of initiation have not yet been performed for him (in his natural family). This is declared in the Dattakamīmāmsā. . . .

Commentary of the Dattaka-mímámsá.

The Commentary of the Dattakamīmāmsā has the following: When a son of the body (Aurasa) is in existence, the Kshetraja and the rest have no right to empire. On failure of a son of the body, the sons beginning with the Kshetraja, and ending with the purchased son, are successively entitled to inherit empire. On failure of them, the son of a woman twice married, the son self-given, and the slave have no right to empire.

Dattaka-chandriká.

Dattakachandrikā.—Members of the three (higher) castes may even adopt one who has completed his fifth year, provided that the ceremony of initiation have not yet been performed for him, and that the period principally prescribed for initiation have not yet elapsed, but they cannot adopt him after that period. A Çūdra may adopt a boy till he has completed his sixteenth year, provided that he be not married. Members of the three (higher) castes have to perform the ceremony of Putreshṭi.

Çūdras may become (adopted) sons merely in consequence of the initiatory ceremonies being performed for them. Thus says the Dattakachandrikā. For a Brahman, the principal period for initiation extends up to three months after the completion of the seventh year. For a Kshatriya, up to three months after the completion of the tenth year. For a Vaiçya, up to three months after the completion of the eleventh year. For a Çūdra, the period fit for adoption extends as far as the sixteenth year. After that period, the marriageable age begins for a Çūdra. Thus the main point is as follows:—It results from the text quoted in the Kālikāpurāna, and from the text "One belonging to a different branch of the Veda," that the restriction as to time has reference to members of a different Gotra only, and not to a member of one's own Gotra. This is the solution of the difficulty. And thus there is no restriction as to time mentioned in the textual definition of an adopted son, "Whom his mother or father give as a son during distress, confirming the gift with water" (Manu, IX., 168).

Dattakanirnaya.

The *Dattakanirṇaya* agrees with the Dattakamīmāmsā.

Dattakatilaka.

The *Dattakatilaka*, while agreeing throughout with the Dattakamīmāmsā, adds the following: A householder only is entitled to adopt; the three other orders (of disciple, hermit, and ascetic) do not possess that right.

Dattakadarpana.

The *Dattakadarpaṇa* declares that one more than five years old can be adopted if he chooses only, but not otherwise.

Dattakakaumudi.

The author of the *Dattakakaumudī* restricts the validity of the rule regarding the adoption of uninitiated persons to those belonging to a different Gotra, and declares it inapplicable to members of the same Gotra. A member of the same Gotra he declares to be capable of being legally adopted, even though the ceremony of initiation should have been performed (in his natural family).

Dattakadidhiti.

The *Dattakadīdhiti* declares that a Dattaka may be adopted both before and after completion of the fifth year, and that there exists no restriction (as to age) for members of the same Gotra. It exists for members of a different Gotra only. Thus, according to the text from the Kālikāpurāṇa, and according to the text—"An adopted son who belongs to a different branch of the Veda."

Dattakasiddhántamanjari.

The *Dattakasiddhāntamanjarī* declares that the rule regarding the completion of the fifth year, and the rule regarding the nonperformance of the tonsure rite, applies in the case of the adoption of members of a different Gotra only, according to the text from the Kālikāpurāṇa, "The ceremonies of tonsure and the rest," and according to revealed law. However, sons adopted before initiation are preferable. . . . .

CHAPTER XII.

Form of adoption. Result of an informal adoption.

Commentary of the Dattakamimámsá.

Commentary of the Dattakamīmāmsā. . . . "As through an appointment (to raise issue on another man's wife) and so forth."[1] The phrase "and so forth" denotes the giving and taking of wealth, in accordance with the text, "Let some Brahman be invited, by offering him wealth, to produce issue.". . . . .

Dattakanirnaya.

Summary. The *Dattakanirṇaya* declares that, where a Dattaka is adopted by a Çūdra, it is legal to perform the Homa through the medium of a Brahman. In some cases, sonship may be produced even without the Homa and other ceremonies; but never without the tonsure rite and the other initiatory rites. This may be gathered from the Kālikāpurāṇa.

Dattakatilaka: 1, Putreshṭi; 2, general rules; 3, form of declaration; 4, adoption after completion of the fifth year; 5, Nandiçráddha; 6, adoption by a householder.

The ceremony of Putreshṭi has to be performed by him only who keeps the sacred fires. . . . Wise men declare that a male who is destitute of a son of any of the twelve kinds should adopt a boy who is given in adoption by his father, and who is five years old from the date of his birth, and for whom the ceremonies up to the tonsure rite have not been performed in his natural father's family,—after having duly informed the King and invited his relations. Thus says the Dattakatilaka. The declaration of gift and acceptance has to be made in the following manner: Now I have given you this son of mine, to be adopted by you; he belongs to this or that Gotra, and has such ones for Pravaras. On the adoption of one five years old, the Putreshṭi ceremony should be performed. A son adopted after completion of his fifth year is not a legitimate son. The custom of Nāndīçrāddha is a bad custom. A householder only is entitled to adopt; the other orders may not adopt.

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[1] See Dattakamīmāmsā, v. 16.

Dattaka-darpana.
Dattaka-didhiti.
Dattaka-siddhánta manjari.

The rites to be observed at the adoption of a son are described in the ritual stated by Çaunaka as follows:—"On the previous day," etc. The Nāndīçrāddha should be performed likewise. Thus says the Dattakadarpaṇa.

The Dattakadīdhiti describes the ritual to be observed by the followers of the Rigveda and of the Yajurveda respectively; and so does the Dattakasiddhāntamanjarī. This shall not be repeated here, in order to avoid prolixity.

Dattaka-nirnaya.

Informal adoption according to Summary. — One formally adopted only is indeed an adopted son. He only is capable of inheriting. Thus says the Dattakanirṇaya.

Dattaka-kaumudi.

Though one formally adopted son be in existence, another formally adopted son has a right to exist, and he is entitled to inherit. Through a desire to have many sons, the formal adoption of a Dattaka may take place, in spite of the existence of a son of the body (Aurasa). Thus far the Dattakakaumudī.

The Tilaka and Darpaṇa do not say anything.

Dattaka-siddhánta-manjari.

The Dattakasiddhāntamanjarī declares that a Dattaka, for whom the ceremonies ending with the ceremony of initiation have been performed by the adopter, is entitled to the same share of the inheritance as a son of the body. If, however, the whole series of ceremonies ending with initiation should not have been performed by the adopter, he shall only receive property sufficient to defray the expense of his nuptials. Where a son of the body is in existence, and the ceremonies have been performed (by the adopter), the adopted son shall not take more than a quarter share.

CHAPTER XIII.

Right of inheritance in cases of competition between a son of the body and a formally adopted Dattaka son.

Comment-ary of the Dattaka-chandriká.

Commentary of the Dattakachandrikā.— . . . "Subsequent to the adoption." Supply: if a legitimate son is born to both the natural and adoptive fathers.[1] "In the wealth of the

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See Sutherland's Dattakachandrikā, V. 33 (where, however, this para. has not been translated literally). Under this interpretation, the Dattakachandrikā agrees perfectly with the Mayūkha (IV, 5, 25). A different interpretation has been proposed in this volume, p. 185.

natural father" he takes half of the share of the legitimate son,—*i. e.*, he takes a third part of what a legitimate son would have taken. "To his adoptive father" he . . . takes one-half of the share ordained for an adopted son, *viz.*, of the third destined for an eminent adopted son, or of the fourth destined for a worthless adopted son. The meaning is that, supposing him to be an eminent son he shall take a sixth part of the share of a legitimate son; and an eighth part, if he be a worthless son. . . .

Dattakadarpana.

Dattakadarpaṇa.—If a son of the body is born after the adoption of a Dattaka, the son of the body shall take three parts of the inheritance, and the adopted son shall take the fourth part. This may suffice.

Dattakakaumudi.

Dattakakaumudī.—Now about the right of inheritance of an adopted son. If a son of the body is in existence, he shall take one-fourth of the share due to a son of the body. If no son of the body is in existence, he takes the whole. . . .

Dattakadidhiti.

Dattakadīdhiti.— . . . Where a son of the body is born subsequently, he (the adopted son) obtains the fourth part of his (the son of the body's) share. . . .

Chapter XIV.

Right of inheritance in cases of competition between one formally and one informally adopted.

Dattakanirnaya: 1, succession to a Sapiṇḍa;

Summary of Chapters XIII, XIV. Dattakanirṇaya.—The Dattakanirṇaya declares that a Dattaka of the first class, or one adopted by a male, shall succeed both to his adoptive father's wealth and to the wealth of a Sapiṇḍa (of the latter). If a woman, with the sanction of her husband, adopts a son after his death, he takes his father's wealth only, and not the wealth of a Sapiṇḍa. If, however, the husband has given his consent to the adoption before his death, and the Sapiṇḍas have assented to it after his death, a son thus adopted by a woman inherits the wealth of the Sapiṇḍas under the text—"If, by permission of the Sapiṇḍas," etc. A boy may be adopted in the country of Orissa, though the ceremony of initiation have been performed for him in his natural family. But this is forbidden elsewhere. If one sonless has a brother's son, the latter is (equal to) an adopted son of his. On failure of

2, local law of Orissa;

3, a brother's son;

him, the daughter's son; on failure of him, any Sapiṇḍa; on failure of him, a member of the same caste (Varṇa).

Dattaka-darpana. The *Dattakadarpaṇa* declares that an adopted son shall take a fourth share, if a son of the body is born subsequently.

Dattaka-kaumudi. The *Dattakakaumudī* declares that an adopted son shall take a fourth part of what a son of the body ought to get of the whole wealth of the father, grandfather, &c.

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To the Manuscripts of unpublished Sanskrit Works referred to in this volume.

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Vivādabhangārṇava, composed by Jagannātha, the original of Colebrooke's Digest—One manuscript in my possession.

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[1] Ṭodarānanda has been erroneously stated in this work to be the name of an author. It is the name of a work, composed by Ṭodar Mall.

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ERRATA.

Page 19, *lines* 17, 21, *for* 'Saūkshyas' *and* 'Saūkshya,' *read* 'Saukhyas' *and* 'Saukhya.'

" 19, *line* 17, *add in margin*, 'Ṭoḍar Mall.'

" 21, *line* 5, *add in margin*, 'Sarasvatīvilāsa.'

" 23, *line* 1, *before* 'in,' *insert* 'and.'

" 23, *line* 18, *and page* 24, *line* 39, *for* 'Dvaityanirṇaya,' *read* 'Dvaitanirṇaya.'

" 27, *line* 29, *for* 'last,' *read* 'lost.'

" 43, *last line*, *for* 'of,' *read* 'Of.'

" 44. *line* 5, *for* 'Vajrasūci,[2]' *read* 'Vajrasūchī.'

" 51, *line* 10 *of the heading*, *for* 'Dharmastūras,' *read* 'Dharmasūtras.'

" 76, *line* 17, *for* 'too,' *read* 'two.'

" 81, *note* 3, *line* 4, *for* 'Hyādūyaçcha' *and* 'Amantraçcha,' *read* 'Hyadāyāçcha' *and* 'Amantrāçcha.'

" 83, *note* 5, *last line*, *for* 'state,' *read* 'estate.'

" 91, *note* 1, *line* 5, *for* '*Nā.*' *read* '*Na.*'

" 93, *note* 2, *line* 1, *for* '**प्रयोव्यम्**' *read* '**प्रयोज्यम्**;' *and add* '*at the end of this note.*'

" 95, *line* 1, *for* 'others,[1]' *read* 'others.'

" 95, *line* 18, *for* (Mādhuparkika), *read* (Mādhuparkika)[1].

" 99, *line* 27, *for* 'estates,' *read* 'estate.'

" 100, *line* 23, *for* 'state,' *read* 'estate.'

" 100, *note*, *line* 3, *for* 'Kallūka,' *read* 'Kullūka.'

" 102, *line* 35, *for* 'claimant,' *read* 'element.'

" 103, *line* 2, *for* 'Two,' *read* 'These.'

" 103, *line* 4, *for* 'come,' *read* 'came.'

" 103, *line* 7, *for* 'Representative,' *read* 'Representation.'

" 103, *line* 34, *for* 'showed,' *read* 'shown.'

" 104, *line* 11, *for* 'Smṛiti,' *read* 'Smṛitis.'

" 105, *line* 14, *dele* 'been.'

" 110, *note* 1, *line* 8, *for* '108,' *read* '187.'

" 111, *line* 34, *for* 'gifts,' *read* 'gift.'

" 113, *note* 1, *line* 4, *for* 'Viçvanya,' *read* 'Viçvarūpa.'

" 114, *note* 2, *line* 3, *for* 'p. 108,' *read* 'pp. 86, 87.'

" 117, *line* 3, *for* '(*Pṛatigṛaha*),' *read* '*Pratigraha.*'

" 118, *line* 16, *for* 'embraces,' *read* 'embrace.'

" 120, *note* 2, *line* 5, *for* 'Dravyāvirodhena,' *read* 'Dravyavirodhena.'

" 121, *note* 3 has been erroneously placed before p. 122, *note* 1.'

" 122, *line* 20, *in margin*, *add* 'Vivādachintāmaṇi.'

Page 122, *note* 2, *line* 4, *for* 'Labdhanstān,' *read* 'labdham tan.
,, 124, *line* 9, *for* 'reasons,' *read* 'reason.'
,, 125, *note* 1, *line* 6, *for* 'reading,' *read* 'rendering.'
,, 126, *note* 5, *line* 4, *for* 'VI. 1,' *read* 'II. 1, 1.'
,, 127, *line* 22, *for* (p. 46), *read* (p. 46).[1]
,, 127, *line* 24, *for* 'Vaijayantī,[1]' *read* 'Vaijayantī.'
,, 129, *line* 8, *for* 'not,' *read* 'now.'
,, 130, *note* 2, *line* 4, *for* 'unequal,' *read* 'equal.'
,, 131, *note* 1, *for* '14,' *read* '101.'
,, 133, *line* 22, *for* 'partition,' *read* 'position.'
,, 137, *note* 5, *line* 1, *for* (§100), *read* (§100.
,, 141, *line* 22, *for* 'svōmyam,' *read* 'svāmyam.'
,, 144, *line* 16, *for* 'Doyámushyáyaṇa,' *read* 'Dvyāmushyāyaṇa.'
,, 150, *note* 2, *line* 1, *for* 'no' *read* 'not.'
,, 151, *line* 20, *for* '*nuptiar*,' *read* '*nuptiae*.'
,, 155, *line* 14, *after* 'obviously,' *insert* 'to.'
,, 155, *line* 20, *for* 'Dracidian,' *read* 'Dravidian.
,, 155, *line* 37, *for* 'relieved,' *read* 'unrelieved.'
,, 155, *note* 3, *for* 'T. Grimen,' *read* 'J. Grimm.'
,, 156, *line* 26, *for* 'Boīta,' *read* '(Krīta.)'
,, 156, *line* 27, *for* 'Apaçiddha, Apaçiddhaka,' *read* 'Apaviddha' 'Apaviddhaka.'
,, 157, *line* 16, *for* '*imitatus*,' read '*imitatur*.'
,, 159, *note* 3, *for* '156' *read* '157.'
,, 160, *lines* 19, 22, and *page* 161, *line* 22, *for* 'Dattakamundī,' *read* 'Dattakakaumudī.'
,, 161, *line* 14, *for* 's. 20,' *read* '5.20.'
,, 161, *line* 26, *for* 'fitted,' *read* 'fitter.'
,, 163, *note* 2, last line, *for* 'late,' *read* 'Calcutta.'
,, 164, *note* 1, *line* 3, *for* 'appeared to be the views,' *read* 'appears to be the view.'
,, 171, *line* 38, *for* 'Isalus,' *read* 'Isaeus.'
,, 171, *dele note* 2.
,, 172, *line* 31, *for* 'show,' *read* 'shows.'
,, 174, *line* 12, *for* 'downards,' *read* 'downwards.'
,, 177, *lines* 3, 41, *for* 'block,' *read* 'black.'
,, 182, *line* 35, *in margin*, *add* 'The modern law.'
,, 183, *line* 14, *in margin*, *add* 'Share of the adopted son.'
,, 183, *note* 1, *line* 4, *for* 'प्रयुक्तः,' *read* 'प्रयुक्तं'
,, 185, *line* 5, *for* 'selected,' *read* 'stated.'
,, 185, *line* 15, *for* 'difficult finally,' *read* 'difficulty.'
,, 186, *line* 14, *for* 'put,' *read* 'meant.'
,, 189, *dele*, *line* 7, 'The statements'—*line* 15, 'Commentary.
,, 195, *line* 25, *for* '(with his,' *read* 'with his ('
,, 197, *note*, *for* 'Mat.,' *read* 'Mit.'
,, 215, *line* 8, *for* 'kinsman,' *read* 'kinsmen.'
,, 215, *note* 1, *line* 2, *for* 'differ- ent,' *read* 'different.'

Page 217, *line* 27, *for* ' *Gotrajā,' read ' Gotraja.'*
„ 218, *line* 3, *for* ' Bandhur,' *read* ' Bandhuh.'
„ 220, *line* 18, *for* ' gender,[2]' *read* ' gender.'
„ 220, *line* 32, *for* ' Mayūkha,' *read* ' Mayūkha[2].'
„ 220, *note* 2, *last line, for* ' स्वगोत्रता ' *read* ' सगोत्रता '
„ 222, *line* 9, *for* ' Arthaveda' *and* ' Viḍhi,' *read* ' Arthavāda ' *and* ' Vidhi.'
„ 223, *line* 17, *for* ' Akatīrthin,' *read* ' Ekatīrthin.'
„ 235, *line* 36, *for* ' annas,' *read* ' Paṇas.'
„ 238, *note* 1, *line* 3, *for* ' निराहे ' *read* ' निर्हार '
„ 242, *line* 29, *dele* ' and.'
„ 244, *line* 40, *for* ' texts ' *read* ' text.'
„ 259, *line* 24, *for* ' a,' *read* ' an.'
„ 260, *heading, line* 5, *for* ' character,' *read* ' — Character.'
„ 261, *line* 18, *for* ' woman,' *read* ' women.'
„ 263, *line* 12, *for* ' donars,' *read* ' donors.'
„ 264, *line* 21, *for* ' fearful,' *read* ' fanciful.'
„ 264, *line* 36, *for* ' bring,' *read* ' being.'
„ 265, *line* 4, *for* ' rain,' *read* ' train.'
„ 265, *line* 43, *for* ' yn,' *read* ' yu.'
„ 269, *line* 7, *for* ' differs,' *read* ' differ.'
„ 269, *note* 1, *line* 6, *for* ' (p. 265) that,' *read* ' (p. 248) that he.'
„ 271, *line* 31, *for* ' antegories,' *read* ' categories.'
„ 272, *note, for* ' P. 260,' *read* ' Lecture VI.'

The theory regarding the rise of the metrical Smṛitis in special Schools of Law has been derived, in the main, from Professor Bühler's valuable MS. Lectures on Indian Family Law. A reference to that work should be inserted in its place in Lecture II.